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# **Supervision of Federal Offenders**

## **MONOGRAPH 109**

**(supercedes *The Supervision Process,*  
*Publication 106*)**

*Probation and Pretrial Services Division  
Administrative Office of the United States Courts  
Washington, DC 20544*

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## **FOREWORD**

United States district courts have statutory responsibility for community supervision of all offenders sentenced to probation and supervised release. Probation officers are the agents of the courts in executing these sentences. Effective supervision requires active monitoring to verify compliance with all conditions—mandatory, standard, and special—and prompt reporting of non-compliance, followed by judicial reaction appropriately guided by established procedures.

Recognizing that some changes in past practices are necessary, the Committee on Criminal Law and Probation Administration established a Supervision Task Force and directly supervised the work of that Task Force. The Committee has carefully reviewed and endorses the product of the Task Force, *Supervision of Federal Offenders*, Monograph 109, as the authoritative standard for the supervision of Federal offenders conditionally released to the community. This monograph significantly contributes to the improvement of community supervision programs by providing a definitive and credible statement of the duties of the probation officer and the mission of the U.S. Probation System.

The loose-leaf format was adopted in recognition of the need to make changes as probation officers gain field experience. The Committee welcomes constructive suggestions for improvement.

RICHARD P. MATSCH, CHAIRMAN  
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Many have worked long and hard over a 4-year period to make this monograph a reality. Contributors have included judges of the Committee on Criminal Law and Probation Administration, members of the Chiefs Management Council, field probation staff from chiefs to officers, and staff of the Federal Judicial Center and the Probation and Pretrial Services Division.

Concern about supervision practices began to mount in 1987, when the Committee on Criminal Law and Probation Administration—then chaired by Judge Edward R. Becker—learned that the quality of supervision of Federal offenders was declining. Consequently, the Committee authorized an indepth study. The findings revealed significant problems and deficiencies. Simultaneously, supervision problems were the topic of a report issued by the Chiefs Management Council. In response, Judge Becker created a subcommittee on supervision of the Committee on Criminal Law and Probation Administration and appointed a Task Force on Supervision to address the critical situation. One product of the Task Force is this monograph.

The subcommittee, which provided guidance and support to the Task Force, was enthusiastically led by Judge Richard P. Matsch. Other members were Judge Pasco M. Bowman II, Judge James C. Cacheris, Judge Stanley S. Harris, and Judge Charles P. Kocoras. The Task Force members, who worked diligently over a 2-year period to develop the monograph, are:

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On behalf of the Committee on Criminal Law and Probation Administration, the Administrative Office of the United States Courts, and the Probation and Pretrial Services Division, we thank the aforementioned who made the publication of this monograph possible.

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## **Chapter I**

### **Supervision of Offenders in the Federal Probation System**

Community supervision of Federal offenders is the principal responsibility of the Federal Probation System. The Director of the Administrative Office of the United States Courts, through manuals and memoranda published by the Probation and Pretrial Services Division, provides policy and direction to probation officers. Probation managers are responsible to the Director for resources allocated for supervision purposes.

This monograph was developed at the direction of the Judicial Conference Committee on Criminal Law and Probation Administration to respond to a changing criminal justice environment. It is a culmination and refinement of the Federal Probation System's years of experience in the criminal justice profession and is the authoritative standard for the supervision of Federal offenders.

In 1983, the Probation and Pretrial Services Division (then, the Probation Division) published *The Supervision Process*, Publication 106. This publication provided a systematic and goal-directed approach to supervision. Supervision guidelines were implemented to provide specific criteria for case classification and contact rates. Additionally, risk prediction devices developed by the U.S. Parole Commission and the Federal Judicial Center were adopted and implemented as a primary standard for case classification.

After the publication of *The Supervision Process*, new legislative mandates, a changing supervision population, and the need for more effective methods of controlling offenders in the community necessitated a revision of the Federal supervision process. Specifically,

- The Comprehensive Crime Control Act of 1984 created a sentencing guideline system, abolished parole, created supervised release, made probation a sentence, and mandated certain sanctions for all felonies.
- Evolving drug enforcement legislation changed the mix of offenders received for supervision.
- Prison and jail overcrowding spawned intensive supervision initiatives, such as home confinement enforced by electronic monitoring, that have stimulated new interest in the potential of community-based intermediate sanctions.

These changes stimulated the rethinking reflected in this monograph.

#### ***Philosophy of Supervision***

United States probation officers serve as officers of the court and as agents of the U.S. Parole Commission. They are responsible for the super-

vision of all persons conditionally released to the community by the courts, the Parole Commission, Bureau of Prisons, and military authorities. *Their supervision mission is to execute the sentence, control risk, and promote law-abiding behavior.*

### **Sentencing Purposes**

**Probation.** The Comprehensive Crime Control Act of 1984 makes probation a sentence in its own right. It is one of several sentencing options that a court may impose, giving consideration to the need for the sentence to:

- reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- afford adequate deterrence to criminal conduct;
- protect the public from further crimes of the defendant; and
- provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Probation is not a means by which a punitive sentence is suspended. It is a sentence that may have elements of punishment, incapacitation, deterrence, and correctional treatment. As a sanction in and of itself, it must be enforced as is a sentence to imprisonment [see Ch. IV.A.1].

**Supervised Release.** Established by the Comprehensive Crime Control Act of 1984, supervised release is a term of community supervision that the court may impose to follow a period of imprisonment, giving consideration to the need for the sentence to deter crime, protect the public, and provide services to the defendant.

The need to reflect the seriousness of the offense is not a consideration for the court when deciding whether to include a term of supervised release. This objective will have been addressed by the imprisonment portion of the sentence. Such terms, however, are mandated for certain drug offenses.

**Parole and Mandatory Release.** Parole and mandatory release are forms of early release from prison through the exercise of discretion by the U.S. Parole Commission and the operation of the good-time laws that were in effect before the Comprehensive Crime Control Act of 1984. These terms are distinguished from either probation or supervised release in that parolees and mandatory releasees remain in the legal custody of the Attorney General, serving a portion of their sentence of imprisonment in the community. The purposes to be achieved by parole and mandatory release are identical to those for the original sentence.

### **Supervision Objectives**

*The primary objectives of supervision are to enforce compliance with the conditions of release, to minimize risk to the public, and to reintegrate the offender into a law-abiding lifestyle.* To accomplish these objectives, the officer has the following specific responsibilities.

**Discharge Statutory Duties.** To comply with the requirements of 18 U.S.C. section 3603, probation officers shall [see Ch. IV. A.1A]:

- instruct the person under supervision as to the conditions specified by the sentencing court and provide him or her with a written statement clearly setting forth all such conditions;
- keep informed concerning the compliance with any condition of supervision and report thereon to the court or Parole Commission;
- keep informed as to the conduct and condition of a person under supervision and report his or her conduct and condition to the sentencing court or Parole Commission;
- use all suitable methods, consistent with the conditions specified by the court, to aid a person under supervision and to bring about improvements in his or her conduct and condition; and
- keep a record of the officers' work.

**Protect the Community** [see Ch. IV.A.1B]. To provide this most vital aspect of community supervision, the probation officer should:

- establish a plan of supervision consistent with the level of risk posed by the offender to the community;
- utilize risk control supervision activities, including verification of employment and sources of income, financial investigation, monitoring of associates, record checks, urinalysis, and restrictions on travel;
- request modification of the conditions of supervision if necessary to reduce risk. Such modifications may include home detention, community confinement, provisions for search and seizure, and requirements for financial disclosure; and
- systematically review the conduct and condition of offenders and revise supervision plans in accordance with changes in risk levels.

**Address Relevant Problems of Offenders** [see Ch. IV. A.1C]. To assist the offender in becoming a law-abiding and productive member of the community, the probation officer should:

- assess the relevant problems of the offender that are likely to be associated with further criminal conduct and develop a supervision plan to address those problems;
- utilize community resources to provide the offender with the opportunity to participate in substance abuse and/or mental health treatment, employment assistance, and educational opportunities; and
- ensure that the offender's response to treatment is consistent with risk control supervision.

### **Definitions**

**Sentence Execution** — Supervision activities intended to ensure that offenders remain in compliance with all conditions established by the court and the Parole Commission.

**Risk Control Supervision** — Supervision activities intended to detect and deter criminal behavior.

**Correctional Treatment** — Utilization of all suitable methods, not inconsistent with the conditions specified by the court or Parole Commission, to help offenders live a law-abiding life. These include activities directed toward (1) rehabilitating offenders by changing behavior that contributes to their criminality and (2) providing for delivery of services directed toward reintegrating offenders into the community.

### **Statement of Roles**

**The Chief U.S. Probation Officer** is responsible for implementing, monitoring, and maintaining supervision standards.

**The Supervising U.S. Probation Officer** is responsible for reviewing, approving, and monitoring assessment decisions and supervision planning and delivery for assigned officers. Further, through field supervision, audits, consultations, and formal training, the supervisor provides for quality control and staff development.

**The U.S. Probation Officer** executes the sentence through risk control supervision and correctional treatment. The officer maintains knowledge of the offender, enforces the conditions of release, and reports violations according to established standards and procedures [see Ch. IV.A.2A-D].

## **Chapter II**

### **Conditions of Supervision**

The probation officer's authority to supervise offenders is derived from 18 U.S.C. section 3603. The parameters of monitoring, controlling, and influencing the activities of offenders are specified in the conditions of supervision established by the court and the Parole Commission. Mandatory and standard conditions are behavioral requirements for all offenders. Special conditions provide the probation officer with supplemental authority to administer additional sanctions and to provide for correctional treatment.

The authority for imposing conditions of supervision is delineated in statutes pertaining to probation, supervised release, and parole. The court's authority to impose conditions of probation supervision is contained in 18 U.S.C. section 3563 and for supervised release in 18 U.S.C. section 3583. The Parole Commission's authority is derived from 18 U.S.C. section 4209.

#### ***Proposing Conditions of Supervision***

The probation officer proposes conditions of supervision prior to the imposition of sentence for sentences of probation and terms of supervised release. Conditions of parole are recommended during pre-release planning.

Discretionary conditions of probation must be measured against the following considerations established by 18 U.S.C. section 3553:

- The nature and circumstances of the offense and the history and characteristics of the defendant; and
- The need for the sentence imposed:
  - to reflect the seriousness of the offense, promote respect for law and provide just punishment for the offense;
  - to afford adequate deterrence for criminal conduct;
  - to protect the public from further crimes of the defendant; and
  - to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Discretionary conditions of supervised release must be measured against these same considerations *with the exception* of the need for the sentence imposed to reflect the seriousness of the offense, promote respect for law, and provide just punishment for the offense.

Other statutory and practical criteria for assessing the appropriateness of conditions of supervision include:

- That conditions involve only such deprivation of liberty or surrender of property as are reasonably related to the enumerated statutory

purposes for probation or supervised release (18 U.S.C. sections 3563(a), 3583(d)); or, for parole, that conditions be reasonably related to the nature and circumstances of the offense and the history and characteristics of the parolee (18 U.S.C. section 4209(a)(1)(2)).

- That conditions be clearly and precisely stated (18 U.S.C. sections 3563(d), 3583(f), 4209(b));
- That conditions be realistic and the defendant capable of successfully complying with the conditions; and
- That conditions be enforceable.

### ***Mandatory Conditions of Supervision***

#### ***Probation***

18 U.S.C. section 3563(a) mandates that the court shall provide as explicit conditions of a sentence of probation [see Ch. V.A.2A]:

- For a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, state, or local crime during the term of probation;
- For a felony, that the defendant also abide by at least one condition, i.e., a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under 18 U.S.C. section 3563(b);
- For a felony, a misdemeanor, or an infraction, that the defendant not possess illegal controlled substances.

In addition, consistent with the mandatory revocation provisions of 18 U.S.C. section 3565(b) a condition requiring that the offender not possess a firearm must be imposed.

#### ***Supervised Release***

Title 18 U.S.C. section 3583(d) requires that the court shall impose as conditions of supervised release [see Ch. V.A.2B]:

- That the defendant not commit another Federal, state or local crime; and
- That the defendant not possess illegal controlled substances.

#### ***Parole***

Title 18 U.S.C. section 4209 mandates that the U. S. Parole Commission impose the following conditions:

- That the parolee not commit another Federal, state or local crime;

- That the parolee not possess illegal controlled substances; and
- If a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment.

### **Standard Conditions of Supervision**

Standard conditions apply to all persons under active supervision and provide authority for monitoring and controlling the offender. They are [see Ch. V.A.2A]:

- You shall not commit another Federal, state, or local crime during the term of supervision;
- You shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;
- You shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first 5 days of each month;
- You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- You shall support your dependents and meet other family responsibilities;
- You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- You shall notify the probation officer within 72 hours of any changes in residence or employment;
- You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;
- You shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- You shall permit a probation officer to contact you at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- You shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
- You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

- As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics and shall permit the probation officer to make such notification and to confirm your compliance with such notification requirement.

Implementation of these conditions will be discussed further in Chapter IV.

### ***Special Conditions of Supervision***

#### ***Mandatory Special Conditions***

Title 18 U.S.C. section 3563(a)(2) requires, for a felony, the imposition of either a fine, restitution, or community service as an explicit condition of a sentence of probation unless the court finds such condition to be plainly unreasonable due to extraordinary circumstances. Under the authority of 18 U.S.C. section 3583(d), these sanctions may also be made conditions of supervised release should such a term be imposed [see Ch. V.A.2A].

**Fine** [see Ch. III.B6-17]. A fine may be imposed as a separate penalty by the court or as a special condition of probation or supervised release. Title 18 U.S.C. sections 3571, 3572, 3573, and 3574 delineate the fine provisions for individuals and organizations. They include factors to be considered in imposing fines, time and method of payment, security for stayed fines, delinquency and default guidelines, procedures for modification or revision of a fine, and the implementation of a sentence of fine.

**Restitution** [see Ch. V.A.3B and see Ch. III. B1-4]. Restitution for actual damages caused by the offense of conviction may be imposed as a separate penalty by the court or as a condition of probation or supervised release (18 U.S.C. sections 3556 and 3663(g)). The probation officer is obligated to enforce the timely payment of restitution as well as monitor the method in which payment is made.

**Community Service** [see Ch. V.A.2A2] Community service, defined as non-salaried service by the offender for a set period of time to a civic or non-profit organization (or individuals), may be ordered by the court as a condition of probation or supervised release. In the case of a felony, the court must consider community service as a condition of probation if no fine or restitution is ordered.

#### ***Discretionary Special Conditions***

Title 18 U.S.C. sections 3563(b) and 3583(d) provide the court with authority to impose any other condition that has a genesis in the offense of conviction, the history and characteristics of the offender, or the relevant statutory goals of sentencing described in 18 U.S.C. section 3553(a). Title 18 U.S.C. section 4209 gives similar authority to the Parole Commission [see Ch. V.A.2A].

**Community Confinement** [see Ch. V.A.7]. The court or Parole Commission may impose as a condition that an offender reside in, or participate in a program offered by, a community corrections center. Such a condition

may be considered for offenders who, for purposes of risk control, should be placed in a structured residential setting or those for whom it is the least restrictive method for providing needed reintegrative services that emphasize basic economic and living responsibilities. A community corrections center placement may be used prior to release on parole, as an alternative to more restrictive forms of incarceration at the time of sentencing, for a limited period of time as a consequence of failure to abide by the conditions of supervision, or to provide temporary residence and support services for a limited period. Such a placement should generally not exceed 6 months.

**Home Confinement** [see Ch. V.A.3C]. The court or Parole Commission may impose as a condition of supervision that an offender remain at his or her place of residence during specified hours. This condition should be imposed only as an alternative to incarceration and generally should not exceed 6 months. The three types of home confinement are:

- *Curfew*: the offender is restricted during specified hours, usually at night;
- *Home Detention*: the offender remains at home at all times except for approved leave for employment, education, medical attention, or correctional treatment.
- *Home Incarceration*: the offender is restricted to his or her residence at all times except for approved leave for religious or medical reasons.

Home confinement may be used as an up-front sentencing alternative to imprisonment or may be considered for those offenders for whom it is the least restrictive method of controlling risk or responding effectively to failure to abide by the conditions of supervision. Compliance with this condition may be monitored by telephone contacts, unannounced home contacts, or electronic signalling devices.

**Search and Seizure.** A special search condition needs to be carefully drawn to allow for the search in a reasonable manner and place and at a reasonable time. Search of offenders under the jurisdiction of the Parole Commission is governed by the regulations of that agency. This condition serves the purpose of risk control and might be considered for persons convicted of crimes involving contraband, stolen property, smuggling, weapons, etc.

**Financial Disclosure.** The court or Parole Commission may impose special conditions that require the offender to report the source and amount of personal and/or business income and financial assets. These conditions are particularly helpful in supervising drug traffickers and white collar offenders for risk-control purposes and may also be considered where there is some dispute over an offender's ability to pay a court-ordered fine or restitution.

**Third-Party Risk.** The probation officer may find it necessary to request a special condition to restrict an offender's travel, employment, or social and

business contacts in the interest of protecting a specific third party or parties from a "reasonably foreseeable" risk of physical or financial harm.

**Drug Aftercare** [see Ch. V.A.3A]. A condition of drug aftercare treatment is imposed on drug-dependent offenders. The purposes of a drug aftercare condition are to assist the offender to achieve a drug-free existence and to protect the community.

**Alcohol Treatment.** A condition for alcohol treatment may be imposed by the court or Parole Commission if an offender has symptoms or a history of alcohol abuse. Although voluntary participation through the use of community resources is preferred, a special condition may become necessary if the offender refuses to participate in treatment and there is sufficient reason to believe that the offender's abuse of alcohol is associated with criminal behavior.

**Mental Health Treatment.** When an offender is unable to cope with stress and displays symptoms of mental illness, the probation officer may provide direct treatment services or refer the person to available community resources on a voluntary basis. When offenders represent a danger to themselves or the community or are unable to comply with the requirements of supervision, a condition for mandatory mental health treatment should be requested.

#### ***Implementing Conditions of Supervision***

At the onset of supervision, the probation officer thoroughly reviews the conditions of supervision with the offender. Officers should clarify the purpose of each condition, how it is to be fulfilled, and the consequences of non-compliance. Supervision cannot be expected to fulfill its deterrent purpose unless the offender is fully aware that non-compliance will result in consequences adverse to the offender's freedom in the community. To facilitate offender understanding and cooperation, officers should encourage questions and, where appropriate, offer assistance. The offender signs all copies of the conditions and is provided a copy. The instructions given by the probation officer and subsequent discussions relating to the conditions of supervision are recorded in the case file [see Ch. IV.A.4].

Methods for monitoring and facilitating compliance with the conditions of supervision are set forth in the supervision case plan. Officers should take steps to ensure that those conditions that require continuous participation and commitment (e.g., treatment of substance abuse, monitoring of finances) are addressed by periodic and consistent investigation.

The offender's compliance with the conditions of supervision is summarized in the progress review and the case plan modified accordingly.

#### ***Modification of Conditions of Supervision***

Unexpected problems may surface during the term of supervision that, if left unresolved, may diminish the offender's ability and desire to function within the requirements of supervision and increase the potential for further criminal activity. The probation officer has a statutory duty to address these problems. This may include requesting additional conditions of supervision,

intensified restrictions, or enhanced treatment services. Conversely, when a treatment condition or other special condition has been satisfied or is no longer relevant, the probation officer should inform the court or Parole Commission. A modification or deletion of a condition of supervision may be made pursuant to 18 U.S.C. sections 3563(c), 3583(e), and 4209(d)(l) [see Ch. V.A.18].

When considering a modification of the conditions of supervision, the consequences should be discussed with the person under supervision. The offender's cooperation is solicited to effect timely resolution of the problem and expedite the legal and administrative procedures necessary to achieve modification (e.g., an informed waiver of required hearings (Rule 32.1(b)).

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## **Chapter III**

### **The Supervision Planning Process**

The probation officer's statutory responsibilities can be met only by implementation of a well-developed case supervision plan. Case planning is a dynamic process which involves:

- gathering relevant offense and offender data;
- identifying supervision issues; and
- selecting appropriate supervision strategies.

The resultant plan will serve as the officer's blueprint for enforcing the conditions of supervision, controlling the risk posed by the offender, and providing for correctional treatment.

The supervision planning process is designed to create a strategy-based plan of action to address specific issues. It requires that all supervision activities, including personal contacts, be structured to ensure compliance with the conditions of supervision, protect the community, and provide for correctional treatment. The linking of supervision activities to what is necessary to fulfill the relevant statutory responsibilities in each case is intended to provide for efficient and effective use of the officer's time.

This process does not deemphasize the importance of personal contact with the offender, but recognizes that the quality of supervision depends on what is accomplished by a particular activity rather than its frequency. The measure of success of the supervision program is the degree to which the offender conforms to the conditions of supervision, identified supervision issues are resolved, and officer intervention is timely and appropriate.

Supervision planning begins with an initial assessment period during which the officer will obtain and evaluate information regarding the conditions of release, the degree and the kind of risk the offender poses to the community, and the characteristics and conditions of the offender which indicate the need for correctional treatment. Based on the information gathered, the officer will identify as supervision issues those specific conditions of supervision and case problems that require direct action by the officer during the supervision period and then select the supervision strategies necessary to address those issues.

The plan will be reviewed by a supervisor and, when approved, implemented.<sup>1</sup> The officer is responsible for accomplishing those supervision activities selected as being necessary to enforce the conditions, control risk, and provide for correctional treatment for as long as the supervision issue is relevant.

<sup>1</sup>The role of the supervisor in the quality control process is discussed in Chapter VI.

At regularly scheduled 6-month intervals, the plan will be reevaluated. The "Semiannual Status Report" process and form are designed to assist the officer in evaluating the status of the case and the progress of the offender for the purpose of modifying the plan if the previously defined objectives have been achieved or if the offender's progress is unsatisfactory. The modified plan will guide the officer's supervision efforts for the next 6 months. This process will be repeated throughout the term of supervision.

### ***Initial Assessment Period***

The initial assessment period affords the officer an opportunity to gather relevant offense and offender data, identify and prioritize supervision issues, and select appropriate supervision activities. The assessment period shall not exceed 60 days and will vary in duration depending on the circumstances of a particular case. The probation officer's goal is to complete and implement the plan at the earliest possible time, consistent with being fully informed as to the offender's condition and circumstances. In addition to information-gathering and case assessment activities (detailed below), there are also certain supervision activities which must be initiated during this period.

### ***Supervision Activities During the Assessment Period***

Although the first 60 days are designated as an assessment period, this is a critical time in the supervision program, and certain supervision activities must be initiated immediately to address issues which cannot be left unattended.

The most important of these activities is the assessment and orientation interview with the offender, conducted by the officer to whom the case is assigned after he or she has become familiar with all available background material (see next section, "Gathering Information"). The purpose of this interview is to clarify the role and responsibilities of both the officer and the offender and to gather further information. During the interview, the officer is to:

- provide a copy of and review with the offender the conditions of supervision, discussing the specific requirements of each;
- explain clearly the consequences of non-compliance;
- explore in more depth those potential supervision issues identified from the written materials;
- ascertain the offender's current employment, financial, and family situation and, where appropriate, offer necessary assistance to improve the offender's condition;
- identify collateral informational sources;
- have the offender sign any necessary release forms for further verification and/or planned financial investigation; and
- instruct the offender on felony registration requirements, if appropriate.

Among the other immediate supervision activities during the assessment period are the following:

- arrange to deal with any emergency situations, e.g., lack of housing;
- implement or require satisfaction of any special conditions when possible;
- initiate a urine testing program when necessary;
- notify appropriate persons in third-party risk cases;
- establish liaison with local law enforcement and with other authorities that have the offender under supervision, if appropriate;
- supply necessary information to computerized criminal data bases;
- develop collateral informational sources;
- request additional conditions of supervision from the court or the Parole Commission, if necessary;
- request modification of unenforceable conditions of supervision by the court or the Parole Commission, if necessary; and
- limit non-emergency travel until sufficient information is obtained for competent evaluation of the risk posed by such travel.

#### *Gathering Information*

In order to become fully aware of an offender's circumstances, the probation officer shall first review all available written material, then conduct an assessment and orientation interview with the offender, and finally investigate to verify and/or supplement the information received. Specifically, during the assessment period, the officer must:

##### **1. Review Written Materials**

- the Judgment and Commitment Order, Probation Form 7A, or parole certificate;
- the presentence report;
- presentence reports of codefendants and offenders in related cases, if feasible;
- Bureau of Prisons reports (if available); and
- pretrial supervision records (if available).

##### **2. Conduct the assessment and orientation interview with the offender (see previous section, "Supervision Activities During the Assessment Period")**

##### **3. Verify the Information Received**

- interview family members;
- determine the status of any codefendants or offenders in related cases;

- investigate employment and verify the legitimacy of income; and
- verify and evaluate the offender's residential situation.

These activities are necessary to ensure that the probation officer has verified information about the offender's current situation so that supervision issues are accurately identified and appropriate priorities are established. Some of these activities may be unnecessary when short terms of supervision are ordered for petty offenders or when the officer is thoroughly familiar with the status of the offender (e.g., one on whom the officer has personally completed a presentence investigation shortly before the offender was received for supervision).

**Reviewing the Conditions of Supervision.** Required, standard, and special conditions of supervision provide the probation officer with enforcement authority and also establish enforcement responsibilities. Conditions of supervision are generally imposed to provide for just punishment, to control risk, and to require correctional treatment to improve the conduct and condition of the offender. Some conditions will serve more than one purpose.

The officer must be thoroughly familiar with the conditions of supervision, must ensure the offender is aware of those conditions and their purposes (see Chapter II), and must develop a plan to ensure compliance with those conditions (see Ch. V.A.4).

**Assessing Risk.** Most standard and some special conditions of supervision are designed to control risk and to protect the community from further crimes of the offender. Other risk control problems may be indicated by information about the offender's circumstances and prior conduct.

The first step in assessing offender risk is to compute the RPS-80 (see Appendix A) in probation cases or the Salient Factor Score (SFS) (see Appendix B) in parole and supervised release cases. These predictive devices address the statistical probability that the offender will reoffend or violate the conditions of supervision. Offenders scoring more than 19 points or "automatic assignment" on the RPS-80 and those scoring 8-10 points on the SFS are to be considered very good actuarial risks. Lower scores indicate a chance of reoffending that must be addressed by risk-control strategies.

The second step of risk assessment is a review of all relevant information about the characteristics of the offense and the offender for indications that the risk posed by the offender is greater than indicated by the actuarial device or, if already considered a risk, for identifying the type of risk involved. Such indications include:

- substance abuse related to criminal conduct;
- current or prior violent behavior and/or use of weapons;
- Participation in continuing criminal conspiracies (e.g., wholesale drug distribution or organized crime offenders);

- unexplained assets or current lifestyle incompatible with reported income;
- pattern of similar criminal conduct; and
- serious mental health problems.

The combination of the risk prediction score and the existence or absence of the offense or offender characteristics indicated above will assist the officer in determining to what extent the case plan and supervision activities must address risk control concerns.

**Identifying Correctional Treatment Problems.** Correctional treatment problems are those characteristics, conditions, or behavioral patterns of the offender which limit the offender's motivation or ability to function within conditions of supervision and which the probation officer can reasonably predict will influence supervision outcome. When identifying correctional treatment problems as supervision issues, keep in mind that compelled participation in correctional treatment is authorized only to the extent that such participation is reasonably related to the relevant statutory purposes of sentencing and involves only such deprivation of liberty or property as is necessary to achieve those purposes.

Correctional treatment activities are defined as actions taken by the officer, either directly or by way of referral, which are intended to bring about a change in the offender's conduct or condition for the purposes of rehabilitation and reintegration of the offender into the law-abiding community.

The primary sources of information which the officer must review to identify correctional treatment problems are:

- personal history section of presentence report;
- Bureau of Prisons prerelease plans and institutional reports;
- physical or mental health evaluations;
- information from family and other collateral sources;
- records of substance abuse and related criminal conduct;
- records of employment, education, and vocational training;
- financial history; and
- residential history.

The importance of a careful analysis of the offender's history cannot be over-emphasized: Past behavior is the best indicator of future behavior. It is important not only to identify individual problems but to note patterns of behavior. For example, one offender may have a history of job loss due to alcohol abuse while another offender may have a history of sobriety when employed but a pattern of alcohol-related offenses while unemployed. Although alcohol abuse may be identified as a supervision issue for both offenders, the priorities and strategies for addressing the issue should differ.

### *Developing the Case Plan*

After reviewing the conditions of supervision, assessing the offender's risk in the community, and determining correctional treatment concerns, the officer then identifies specific supervision issues and selects the appropriate supervision strategies. The Initial Case Supervision Plan form (see Appendix C) is designed to assist in this process.

The Initial Case Supervision Plan form is divided into three sections: Enforcing Court-Ordered Sanctions, Risk Control, and Correctional Treatment. Under each of these headings, a menu of common supervision conditions, problems, and strategies is set forth. Upon determining which supervision issues are applicable in a given case, the officer will simply check (✓) that particular issue, then check the supervision strategies which are necessary and adequately address the issue. To avoid duplication, a particular issue or strategy is listed only once, even though it might also serve other purposes. When completing the form, keep in mind that it is only a tool for structuring and recording the process of planning for the supervision of an offender for 6 months, not an exercise in precise categorization.

Although duplication on the form was avoided to reduce unnecessary paperwork, it is important to recognize that, in reality, overlapping purposes are inherent in the system. In the final analysis, all supervision conditions and activities serve the goal of crime control. Enforcement of conditions that provide for just punishment promotes respect for the law and may deter others from crime. Risk control activities may deter the offender from crime or provide for early detection and intervention to prevent or reduce the harm resulting from new criminal conduct. Correctional treatment activities help an offender improve his or her conduct and condition so as to live a law-abiding life. The combination of all of these efforts is intended to reduce crime and to protect the community.

**Defining Supervision Issues.** For case planning purposes, a "supervision issue" is defined as an existing condition of supervision or an offender characteristic or pattern of behavior that requires intervention by the officer to correct or to control.

Officers should not set forth as supervision issues all of an offender's perceived deficiencies. The issues identified in the case plan are limited to those the officer plans to address during the period covered by the plan. For every supervision issue checked, an accompanying strategy is expected. Other problems that the officer may deal with in the future, or incipient problems that will be monitored but not addressed directly, should be noted in the comments sections of the case plan form but not identified as current supervision issues.

The process of identifying supervision issues and selecting supervision strategies carries with it an implicit expectation that priorities be established. Some issues, such as chronic substance abuse, must be addressed before others, such as financial responsibility, may reasonably be addressed. Highest priority is to be given to those issues which, if not ad-

dressed, would most likely subject the community to harm [see Ch. IV.B.6A].

**Identifying Impediments to Resolving Supervision Issues.** After identifying supervision issues, but before selecting specific strategies to deal with them, an officer must determine if there are conditions or circumstances which may interfere with the officer's efforts to implement an otherwise appropriate case supervision plan. If so, these should be noted in the comments sections of the form. These impediments may include:

- the offender's lack of motivation to change or resistance to supervision programs;
- the offender's diminished capacity to change;
- the geographic location of the offender; and
- environmental or cultural factors.

Impediments to supervision do not relieve the officer of the responsibility for developing and implementing an appropriate supervision plan. In fact, they demand more creative and innovative approaches to the process.

**Selecting Supervision Strategies** [see Ch. IV.B.6B]. For each supervision issue identified, one or more supervision strategies must be identified. Simply check (✓) the appropriate strategies and, where appropriate, use the abbreviations at the bottom of the page to indicate on the "projected frequency and type" line how often the activity will take place (e.g., W, 1M, 2Q) and what type of contact (i.e., P, T, D) will be used. The type, frequency, and time/place of the supervision activity must be consistent with (1) the purposes of the supervision activity and (2) the efficient use of officer time.

*Supervision activities related to enforcement of court-ordered sanctions* require the officer to verify and enforce the offender's compliance with specific orders for fines, restitution, community service, and/or confinement. Strategies for addressing confinement conditions will vary depending on such circumstances as the availability of electronic monitoring or familiarity with the community corrections center in which the offender is placed. Compliance with most financial and community service conditions may be verified by document reviews or by telephone inquiries with little direct contact with the offender.

*Supervision activities related to risk control* will require a great deal of direct contact with the offender and others who have information about the offender's conduct. The purpose of these activities is to maintain awareness of the offender's conduct and condition and to intervene in a timely manner when the offender's activities are likely to put the community at unacceptable risk. In the performance of these duties, the officer must observe, and speak to others who observe, the offender on the job, at home, and in social situations. Although the case plan does not provide "Contact with the Offender"

as a supervision activity, such contacts are implicit in such goal-directed strategies as "On-Site Examination of Living Situation," "Unscheduled Urine Collection," and some financial document reviews. It is the purpose of the contact, not the event of the contact, that is important.

*Correctional treatment activities* may require substantial direct contact with the offender if assistance is provided by the probation officer or little direct contact if treatment/counseling is provided by a competent treatment or service agency. If service is provided by an outside agency, the officer must plan to verify participation in the program and to evaluate the quality of services at a frequency consistent with the officer's knowledge of and confidence in the agency. Direct services by the probation officer may include informal assistance and guidance. Officers should watch for signs of correctional treatment needs during all contacts with the offender and his or her family or employer.

*The activities in cases with no supervision issues* will consist of review of the monthly reports and prompt followup of any indication of changed circumstances. Prior to completing the 6-month review, officers should verify the offender's eligibility for early termination or transfer to an administrative caseload. This course of supervision can be indicated on the form by checking "NONE" next to each menu of supervision issues and placing a check (✓) in the "No supervision issues" box that follows the Correctional Treatment section of the form.

**Changes or New Information During the Period of Supervision.** Changes in an offender's circumstances or in an officer's assessment of the seriousness of particular issues may require the officer to adjust supervision efforts. Officers should always verify changes of residence or employment and follow up on any new information indicating a change in the offender's relationships or patterns of behavior. If new supervision issues emerge, the officer should implement strategies to address them and reorder the priorities of the plan. Such a decision should be made after consultation with the supervisor. It is not necessary to change the case-planning document, but the changed circumstances and activities should be noted on the "Semiannual Status Report" discussed below.

It is important to remember that the primary purpose of this whole process is to ensure that supervision of offenders conditionally released to the community is goal directed and guided by a rational plan that is conscientiously executed. Completion of the form is merely the means by which the results of this process are recorded.

#### ***The Review Process***

The 6-month case review affords the officer and the supervisor an opportunity to examine the offender's progress and response to the supervision program and to evaluate the adequacy of the existing plan. The purpose of

this process is to establish a supervision plan for the next 6 months which is based on a comprehensive analysis of the previous 6 months' experience. The Semiannual Status Report and Revised Plan form is designed to assist in this process (see Appendix D).

Officers should evaluate the degree to which the offender has complied with the conditions of supervision and the effectiveness of efforts to monitor the offender's conduct and condition and to provide for correctional treatment. More specifically [see Ch. IV.B.7]:

- **Compliance with Conditions**—Which conditions have been satisfied? Are there conditions with which the offender has been unwilling or unable to comply? What additional conditions or supervision strategies are necessary to bring about compliance?
- **Risk Control**—Has the offender demonstrated sufficient stability to justify a reduction in the frequency of risk control activities? Conversely, has the offender's performance been such that additional risk-control activities are now required? Is there any change in third-party risk? Have there been new arrests? Does the offender meet reporting requirements?
- **Correctional Treatment**—What degree of progress has been achieved in each identified correctional treatment area? Are these activities still necessary? Should correctional treatment efforts be terminated, modified, or intensified? Are there new problems that now must be addressed?

The Semiannual Status Report and Revised Plan form is comprised of four sections. The first three address the status of the case. In addition to asking for summary information about the offender's compliance and providing a page for officer comments, the status report requires officers to list the supervision issues identified on the last case plan and, for each, note if the circumstances warrant a change from the previous case plan. The fourth section of the form is the Revised Case Plan document.

#### *Assessing the Status of the Case*

**Supervision Issue Resolved.** A condition is considered satisfied if it requires no further direct action by the officer, e.g., the fine is paid, community service is completed, or drug treatment is successfully completed. Similarly, a problem is considered resolved when it is sufficiently under control to obviate the need for direct intervention. Note that the focus for case planning purposes is not whether the problem has completely disappeared, but whether the officer must continue to address it.

There will also be circumstances in which the resolution of one particular issue raises a different but related issue to be addressed during the next period of supervision. For example, an offender has successfully completed a court-ordered drug aftercare program and has remained drug free. The correctional treatment special condition has been satisfied and the problem of current drug use resolved. The offender, however, will always have a

"History of Drug Use," a risk-control problem. The officer may therefore determine that random urine tests and close attention to the offender's associations will be necessary for another 6 months to ensure the offender does not return to drugs. Although the topic—drug use—is the same, there is now a difference in focus: While before the purpose of supervision was to change the offender's behavior by correctional treatment, it is now to monitor behavior to control risk.

**Need to Change the Plan.** If a supervision issue has been resolved, it will be deleted from the next plan; this need not be indicated on the case status report. If the condition or problem remains a supervision issue, but the previous plan has resulted in adequate progress, the plan should either remain the same or, if appropriate, be modified to require a lower frequency of particular activities, i.e., less frequent urine tests to monitor possible reversion to drug use. Inadequate progress on a particular supervision issue will signal the need for a more intensive or different type of supervision.

For the purpose of the case status report, progress is considered adequate if no violation report has been filed and if there is no need to intensify supervision efforts. One delinquent fine payment or one positive urine test requires a response by the officer but may not justify a change in the supervision plan.

#### *Assessing Offender Compliance*

This section of the form asks for a summary of how the offender performed for the last 6 months. The topics include:

- if there were any arrests;
- the original fine, restitution, and community service amounts ordered, the current balance, and if the offender is meeting the payment or performance schedule;
- the number of urine samples taken during the 6-month period and the number of positives and stalls;
- if there were any other technical violations;
- whether all of the violations were reported to the court or Parole Commission; and
- the offender's source of income (e.g., employer, self-employed, social security, welfare, etc.) and the average gross income for the 6-month period (total income divided by six).

#### *Officer's Comments*

The Officer's Comment section gives the officer an opportunity to provide any necessary amplification of objective information reported in the other parts of the form. Comments should include:

- the nature of any arrests or technical violations;
- reasons for failing to report violations;

- detail on supervision issues on which progress has been inadequate; and
- new issues that have come to light during the supervision period.

#### *Modified Case Supervision Plan*

The results of the case review process will guide the officer in the development of the supervision plan for the next 6 months (see Revised Case Plan form, Appendix E). Satisfied conditions and resolved problems will be deleted from the new plan. New supervision issues and the supervision strategies required to address them will be included in the new plan. Continuing problems with the same or modified supervision strategies will be carried forward in the new plan.

The Semiannual Status Report and the new Case Supervision Plan are to be completed and submitted to the supervisor for review and approval within 30 days of expiration after the previous 6-month supervision period.<sup>2</sup>

<sup>2</sup>The role of the supervisor in the review process is discussed in Chapter VI.

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## **Chapter IV**

### **Implementing the Supervision Process**

The probation officer's responsibility to enforce conditions of supervision is derived from his or her legal duty to supervise and execute the sentence imposed by the court. Conditions imposed for punishment, deterrence, or incapacitation should be enforced through compliance verification and risk control activities, while conditions imposed to improve the offender's conduct and condition should be enforced through correctional treatment activities. A specific supervision activity may serve multiple objectives, but, in general, priority must be given to execution of the sentence, then to reduction of risk to the community, and finally to correctional treatment.

Title 18 U.S.C. section 3603, the legal authority for the supervision of Federal offenders, provides the framework for meeting these three objectives of effective supervision. It states (in relevant part) that the probation officer shall:

- instruct the person under supervision as to the conditions specified by the sentencing court and provide him or her with a written statement clearly setting forth all such conditions;
- keep informed concerning the compliance with any condition of supervision and report thereon to the court or Parole Commission;
- keep informed as to the conduct and condition of a person under supervision and report his or her conduct and condition to the sentencing court or Parole Commission;
- use all suitable methods, consistent with the conditions specified by the court, to aid a person under supervision and to bring about improvements in his or her conduct and condition; and
- keep a record of the officer's work.

Described below are specific supervision activities that should be undertaken to comply with these instructions to enforce conditions, control risk, and provide correctional treatment.

#### ***Enforcing Financial, Service, and Confinement Conditions***

**Fine** [see Ch. III.B9-17]. When the court orders a fine to be paid in installments, and no payment plan is set at sentencing, the officer should review the offender's financial status and recommend to the court a payment schedule based upon the offender's ability to pay. If this amount is less than will be required to pay the total fine before expiration of supervision, the U.S. attorney may submit a petition for remission or pursue collection of the unpaid balance after expiration. (18 U.S.C. section 3573).

The offender's liability to pay a fine does not expire until 20 years after the judgment has been entered.

Ongoing verification of payments is necessary to determine when a fine becomes delinquent or in default.

- A fine is *delinquent* when a payment is more than 30 days late.
- A fine is *in default* when there has been no payment for 4 months or the amount in arrears exceeds four monthly payments.

The officer has a statutory responsibility to report any fine in default within 30 days after notification of default. (18 U.S.C. section 3603(7)).

**Restitution** [see Ch. III.B1-4]. As with a fine, when the court orders restitution, and no payment plan is set, the officer should review the offender's financial status to determine and recommend to the court a payment schedule. The officer should monitor compliance with the restitution order closely and notify the court or Parole Commission if the defendant fails to comply.

*When both a fine and restitution have been ordered as conditions of supervision, payment of restitution shall take precedence.*

**Community Service.** When community service has been ordered as a special condition of supervision, officers should establish a specific work program during the initial assessment period. In setting up this program, the officer should consider the sentencing objective of the court, the characteristics of the offender, and the needs of the community. The success of a community service placement may also depend upon the offender's skills and abilities, available transportation, and the time necessary to complete the required hours.

Compliance with community service orders should be verified through on-site monitoring and/or review of time sheets kept by the offender and the community agency.

**Community Confinement** [see Ch. VI.C5] When an offender has been ordered to reside at a community corrections center, the officer should contact the center during the initial assessment period and outline the reasons for placement, any special requests of the center, and any unusual problems in the case. The officer should also maintain contact with center staff during the period of placement to determine the offender's compliance with the program.

**Home Confinement** [see Ch. V.A.3C]. Home confinement, or restriction to residence during specified hours, may be monitored by electronic surveillance or unannounced personal or telephone contacts by the officer during the period of restriction. Collateral contacts with employers, doctors, or correctional treatment agencies may be necessary to verify approved absences from home. Home confinement may be ordered only as a substitute for incarceration; therefore, a willful violation should be considered the equivalent of an escape or walkaway. The officer should refer to the forthcoming

home confinement chapter in the *Guide to Judiciary Policies and Procedures*.

### **Risk Control Activities**

Supervision activities aimed at controlling risk are intended to detect and reduce the likelihood of further criminal behavior and should focus on the offender's compliance with mandatory conditions that prohibit new criminal violations and possession of controlled substances or firearms. These activities should also address the offender's compliance with standard conditions of supervision that regulate reporting requirements, travel, associations, residence, employment, and financial obligations. Ongoing verification of the offender's status and conduct is *essential* for the early detection of those indicators that may forecast violations.

When the court orders a special condition intended to deter the offender from further criminal activity, the officer should employ risk control activities to enforce compliance. Special conditions requiring financial disclosure, travel restrictions, and employment restrictions due to third-party risk should be closely monitored by the officer through collateral contacts, investigation, and verifications.

**Search and Seizure.** Any search by a probation officer must be in accordance with administrative and legal requirements. In probation and supervised release cases, the officer should be familiar with the requirements of his or her court and opinions rendered within the circuit. In parole cases, the officer is bound by regulations issued by the U.S. Parole Commission.

Any search by the officer must be restricted to areas of access to the offender and conducted during daylight hours unless good cause is given. For safety reasons, the search should involve the participation of more than one officer. The officer should seek consent of the offender, explain the purpose of the search, and ask police to accompany him or her if there is a potential for violence or a need for expert assistance. Law enforcement officers, however, should not play an active role in the search itself, and the probation officer should not conduct the search as an extension of any law enforcement agency. Any search must be conducted in a manner that reflects consideration for private property and the individual.

An officer may seize illicit items in plain view, such as weapons or drugs, if he or she determines there is a likelihood of destruction of evidence or injury to a third party. The evidence must be secured and standard "chain of custody" procedures followed. The evidence may be turned over to a law enforcement agency for subsequent criminal prosecution.

**Maintaining Law Enforcement Liaison.** The nature and frequency of contacts with law enforcement will vary depending upon the risk posed by the offender and the supervision issues identified. When the actuarial score and/or the offender's criminal history (including a history of violence, similar criminal activity, or criminal associations) has identified risk as an issue of concern, the officer should make frequent contact with those law enforcement agencies that may have information about the activities of the offender. Close coordination with local law enforcement can also expand the

network of data sources available to the officer. The original arresting agency and Federal task forces are good sources of information about an offender's previous criminal activities and associates and can provide valuable assistance to the officer in monitoring the offender's activities while under supervision.

In all cases, routine record checks, either in person or by computer, should be conducted prior to significant decisions such as early termination or reduction in supervision activities.

**Detecting Alcohol Abuse** [see Ch. X.B3]. When the abuse of alcohol can be reasonably linked with the failure to abide by the conditions of supervision, the probation officer should strongly encourage voluntary treatment or, if that does not succeed, request a special condition. Probation officers may detect alcohol abuse by checking local police reports for indications of family problems, neighbor complaints, runaway children, spouse abuse, arrests for driving under the influence, and other charges often linked with alcohol abuse. Family members are another valuable source of information, as are employers who should be contacted for indications of tardiness, unexpected absences, and unexplained declines in performance. When an offender's behavior during a face-to-face contact is such that the officer suspects alcohol use, a breathalyzer test should be administered immediately and the results documented.

**Detecting Drug Abuse** [see Ch. X.B3]. During the initial assessment period, the probation officer should review the presentence report and other case material reflecting offense behavior, criminal history, family situation, health status, and employment background for evidence of a history of drug abuse. Previous charges for possession or distribution of drugs, and arrests for burglary, theft, shoplifting, or prostitution, may signal a potential problem.

Family members and close associates may provide valuable information about the offender's drug use through complaints about his or her inability to hold a job, disruptive behavior, thefts from the home, and poor choice of associates. Arrests of family members or close associates for drug-related offenses are also significant.

Since there is a high correlation between drug abuse and criminal activity, the officer should make ongoing efforts to detect drug use through urinalysis and/or the recognition of physical symptoms. When an officer observes abnormal behavior that may indicate drug use, such as hyperactivity, slurred speech, rhinorrhea (runny nose from inhaling substances), and reddened, constricted, or dilated pupils, he or she should seek a consent from the offender to submit to urinalysis or a physical examination. If the offender refuses to consent, the officer should request a special condition from the court or Parole Commission authorizing urine collection and physical examination. A physical examination may reveal the following symptoms of abuse: fresh or healed injection marks along vein lines; lesions, abscesses, and abscess scars; discoloration of upper arms from tourniquet use; cigarette burns on upper torso and hands; aggravated

pustular acne; eye sensitivity to light; and enlarged or puffy hands, and loss of motor control of the wrist, which result from injections.

The surprise collection and testing of urine samples is the most effective way of detecting drug use.

**Assessing Third-Party Risk.** When the probation officer determines that the offender poses a "reasonably foreseeable" risk of physical or financial harm to a specific third party or parties, he or she should increase risk control supervision, make (or require the offender to make) certain disclosures to third parties, and/or preclude risk-related employment. If necessary, a special condition restricting travel, employment, or associations should be requested to reduce the likelihood of third-party risk. Third-party risk should be reassessed at each change of residence or employment and at the 6-month status review.

**Enforcing Reporting Conditions** [see Ch. V.A.12]. The monthly supervision report contains detailed information about the offender's status and conduct (see Monthly Supervision Report form, Appendix F). The sections on Residence and Employment provide the officer with information about the offender's current living and working situations, methods of contact, and reasons for changes in his or her situation. The Vehicles section provides information that could alert the officer to the offender's association with criminals. Information in the Financial section informs the officer of the offender's general lifestyle, possible fraudulent behavior, and ability to pay a fine or restitution. The section on Compliance with Conditions provides the officer with information on possible violations so that he or she may take actions to bring the offender into compliance or request revocation.

The officer should review each monthly report carefully for completeness and accuracy and investigate any inconsistencies with previous reports, significant changes in the offender's situation, or any admitted violations of supervision conditions. In view of the penalty for making false statements on the monthly supervision form, the offender may refuse to answer questions considered self-incriminating. Such omissions should prompt a followup investigation by the officer.

Officers may also require personal reports by the offender at any time to accomplish supervision objectives.

**Enforcing Travel Restrictions** [see Ch. V.A.13]. For effective risk control, permission to travel should be granted only when it serves the purposes of the sentence and the supervision plan. Before allowing travel outside the district, the officer should make an assessment of the risk posed by the travel, including any third-party risk, and determine whether or not the offender is in compliance with conditions of supervision, especially those requiring fine or restitution payments. Funds for proposed recreational travel should be applied to delinquent fine or restitution accounts in lieu of travel.

Travel requests from offenders in substance abuse treatment programs should be denied absent compelling reasons to the contrary. Offenders with a history of conspiratorial offenses, organized crime, violence, or drug

trafficking should also be restricted unless the officer has verified the legitimacy of the proposed travel.

All travel requests should be submitted at least 2 weeks in advance to allow the officer sufficient time to verify the nature and purpose of the travel through contact with the district to be visited. All offenders granted permission to travel should be instructed to call the officer upon return.

**Monitoring Associations.** To determine the need to monitor the offender's association with convicted felons or persons engaged in criminal activity, the probation officer should first review the presentence report to identify the role of others in the criminal activity and their relationships with the offender. Special attention should be given to offenders who have a history of conspiratorial offenses or organized crime.

During unannounced home and field contacts, the officer should inquire into the identities of unknown persons present and note tag numbers of unknown vehicles for verification of ownership. If necessary to achieve the objectives of supervision, the officer may place the offender's home or other location under surveillance to develop information on associations. For safety reasons, at least two officers should conduct the surveillance and notify local police if the surveillance occurs at unusual hours or in high crime areas.

Contacts with criminal associates may also be discovered through a random check of the offender's telephone toll records and by investigating the identity and criminal history of prospective employers or employees.

All requests by law enforcement agencies to use an offender on probation or supervised release as an informant will be reviewed by the chief probation officer and submitted for court approval only if the offender's proposed cooperation meets the following criteria:

- the offender's service as an informant is voluntary;
- there is a benefit to the community;
- the request for assistance is credible;
- there is a likelihood of success against a significant target;
- the background and motivation of the offender is not counter-productive;
- the offender is not likely to recidivate;
- the officer is able to maintain supervision of the offender; and
- the period of assistance is reasonable.

Law enforcement agencies must meet Parole Commission guidelines before using a parolee as an informant.

**Verifying Residence.** The reported residence of the offender, and any subsequent changes in residence, should be verified by on-site investigation. Documentation such as rental agreements, mortgage papers, and utility bills may be examined to verify ownership and monthly living costs. The officer should make note of those persons residing with the offender and also

assess whether the residence, furnishings, and standard of living are consistent with reported income.

**Verifying Employment.** Ongoing verification of the offender's employment should be conducted through contacts with the employer or review of pay stubs. The officer has a legal duty to assess third-party risk and require official notification of the offender's status if there is a reasonably foreseeable risk to the employer or others.

When employment has been identified as a risk-related problem, the officer should personally observe the place and general operation of the employment and make direct contact with the employer, even if there is no third-party risk. A more detailed investigation of the employer may be required if the legitimacy of employment is an issue.

When an offender changes employment, the officer should contact the former employer to determine the circumstances under which the offender left.

**Verifying Financial Status.** The officer should conduct an ongoing verification of the offender's financial status when there are financial special conditions or when problems related to finances have been identified. The verification process is initiated by reviewing the financial statement in the presentence report and continued by reviewing information on the monthly supervision report. The officer should review purchase agreements for major items such as homes, automobiles, boats, etc. for comparison with the offender's reported financial status.

Considering the confidentiality of financial records, the officer should secure release forms and exercise discretion in requesting tax returns or making Credit Bureau inquiries. Other methods available for verification include review of loan applications, check registers, and bank statements. Failure to maintain awareness of the offender's financial status may allow further criminal activity to go undetected.

### **Correctional Treatment Activities**

Correctional treatment offers the opportunity to bring about improvement in the conduct and condition of offenders. Whereas risk control activities are designed to detect and deter criminal activity, correctional treatment activities are aimed at resolving problems that may lead to criminal behavior.

To implement correctional treatment, the officer's responsibilities include enforcing special conditions of correctional treatment, identifying risk-related family/personal problems and arranging for treatment or services to address these problems, and responding to offender requests for assistance in a manner that is not inconsistent with the conditions of supervision. The officer should refer the offender to professional community resources when a problem presents a risk or threatens compliance with conditions.

**Drug Aftercare Conditions.** When drug treatment is ordered as a special condition, the officer should screen the case carefully during the initial assessment period to develop the appropriate treatment program. If the offender is referred to a contract treatment facility, it is the officer's responsibility to determine the nature and frequency of services to be provided.

Collateral contacts with the treatment agency are necessary to monitor the offender's compliance with the program and to ascertain when the offender has successfully completed all requirements. The officer should remove offenders from contract treatment when it has been determined that the treatment is no longer productive.

**Urinalysis** is used as an adjunct to treatment to enable the probation officer to determine if a person under supervision has refrained from drug use. The frequency of testing is controlled by the phased urine collection program that has been established for all offenders with a drug aftercare condition. The phases include scheduled and unscheduled urine collections to prevent an offender from timing the use of drugs to avoid detection.

**Alcohol Treatment Conditions.** When alcohol treatment is ordered as a special condition, the officer should first consider compulsory attendance at meetings of groups such as Alcoholics Anonymous. Most such meetings have secretaries who will sign a report of attendance without a consent form from the offender. Other treatment modalities include the medically supervised use of antabuse, employment assistance programs that provide treatment to the offender while on the job, outpatient clinics, and placement at community corrections centers.

If the offender is referred to a contract treatment facility, the officer should help select the treatment program and should follow up with the facility to determine the offender's compliance and the quality of services provided.

**Mental Health Treatment Conditions.** Officers should exercise caution at all times in supervising offenders with mental health problems and should avoid confrontation during home contacts. In determining whether an offender is dangerous, the officer should consider the offender's history of violence, previous involuntary psychiatric commitments, past or present substance abuse, uncontrolled hostility toward authority figures, and resentment of the officer's involvement with the offender's family or close associates. If it appears that treatment contacts at the offender's residence may expose the officer to undue risk of physical confrontation, such contact should be made at the probation office or at some neutral location.

If an offender receives a special condition for mental health treatment, the probation officer should locate an appropriate agency to help carry out the court order, making certain that the agency understands that the primary reason for placement is to control the risk of recidivism.

In assessing which agency is appropriate, the officer should ascertain if the agency specializes in the behavior to be treated (i.e., depression, child abuse, sexual deviancy, compulsive disorder) and whether the agency has expertise in working with offenders who are required to submit to treatment. The officer should be aware that many offenders are skilled at manipulating mental health professionals.

If a referral for mental health treatment has been made, the officer is responsible for making collateral contacts with the treatment agency to evaluate the quality of services provided and to determine the need for continued treatment.

**Addressing Other Problems.** The officer must maintain an awareness of the offender's conduct and condition for early detection of problems related to family or marital discord, residence or employment instability, educational deficiencies, or financial concerns. The officer should also be sensitive to problems associated with past criminal behavior and to changes in the offender's lifestyle which could increase the likelihood of law violations or non-compliance with standard conditions. This on-going awareness of the offender's background and present living situation is essential for immediate intervention when problems arise.

In determining which correctional treatment methods are appropriate, the officer should recognize the inherently involuntary nature of the officer/offender relationship. Officers must be firm about the necessity for offenders to remain within the structure imposed by the conditions of supervision, and must be clear about the consequences of failing to do so. Within that structure, however, officers should make themselves available to assist offenders, but should not consider themselves the primary source of mental health *treatment*. Officers do play a critical role in preparing offenders for a successful correctional treatment experience by providing them with information about, and expectations for, their behavior to motivate them to be receptive to treatment intervention by third parties.

Given the limits on officers' time and expertise, they should seek outside assistance through case staffing with supervisors, other officers, or professional consultants when addressing complex problems. An accountable network of specialized resources within the community provides the officer with effective means of correctional treatment.

**Referrals.** The referral process consists of needs assessment, agency selection, preparation of the offender, the initial contact, followup, and evaluation. A referral to a community agency cannot be successful unless the offender recognizes both the problem and the importance of the referral in resolving the problem and has the motivation to follow through.

In selecting an appropriate agency, the officer should scrutinize the agency's capability to deliver the required services. Sending a well-motivated offender to a poorly administered agency may be as useless as sending an unmotivated offender to a good agency.

To prepare the offender for a referral, the officer should remove barriers to a successful experience, such as transportation and paperwork. The offender should receive instructions in writing as to the location of the agency, name and phone number of a contact person, date and time of the appointment, necessary papers to bring, and appropriate dress.

To ensure a successful referral, the probation officer must stay involved in the process and maintain frequent contact with the agency and the offender. This followup stage provides significant information concerning the offender's motivation and relationships with the agency.

All agency referrals must be recorded and the quality of services carefully evaluated to make certain that the community resource is providing treatment that appropriately addresses the offender's problems and results in improvement in his or her conduct and condition. The officer remains

responsible for the offender's law-abiding conduct and must measure the effectiveness of the correctional treatment as it impacts on this goal. *Psychological advances alone are not enough.*

### **Supervision Contacts**

Supervision contacts should be made for the purposes of enforcing conditions, controlling risk, and/or providing correctional treatment. The frequency, place, and nature of the contacts, as well as which persons are to be contacted, will be determined by the plan and directly related to identified supervision issues.

If the primary purpose of a supervision contact is to secure information to verify compliance with a special condition or correctional treatment program, the officer should make such a contact by phone, mail, or office visit. If personal observation is necessary to verify compliance with conditions or to control risk, the officer should make a field contact.

Field supervision contacts with the offender and others are essential for the officer to fulfill his or her statutory requirement to maintain awareness of the offender's conduct and condition. The nature and frequency of field contacts should be determined by the supervision issues in a case. Officers should be sensitive to potentially dangerous situations while conducting field supervision. A team of two officers may travel together when working after normal hours or in high crime areas.

### **Case Management**

Case management is necessary to ensure the efficient use of a probation officer's time and to provide an accurate recording of the supervision process [see Ch. V.A].

**Recording Supervision Activity.** Complete and accurate records of supervision activity are essential to ensure that the activities undertaken are consistent with those outlined in the supervision plan. The chronological record also serves as important source material for other officers who are called upon to make case decisions in the officer's absence and for administrators in conducting case reviews.

The chronological records should contain the date, place, and nature of contacts made with the offender and others. Each entry should be a brief, concise statement reflecting the supervision issue(s) addressed, action taken by the officer, and whether the offender's progress in resolving the issue(s) is satisfactory or unsatisfactory. Significant changes in the offender's status (such as loss of employment or change in residence), determination of third-party risk, and denial of travel permission must be recorded accurately.

The chronological record must be factual and pertinent as it may come under scrutiny by the court or Parole Commission at subsequent revocation proceedings.

**Administrative Caseloads** [see Ch. IV.B.4]. Cases that meet certain criteria may be placed in an administrative caseload with little or no direct supervision activity. This allows officers to organize their caseloads so that

they can concentrate on those offenders who require more activity in order to enforce conditions, to control risk, and to provide correctional treatment.

The criteria for assignment to an administrative caseload are:

- No history of violence, drug distribution, or otherwise notorious offenses;
- No criminal case pending and no criminal convictions in the past 12 months (excluding minor traffic offenses);
- Verified residential and domestic stability for at least 6 months;
- Documented history of compliance with conditions of supervision, including: timely submission of written monthly reports; strict adherence to fine/restitution payment schedules and community service work schedules; and completion of all special conditions for treatment, i.e., drug, alcohol, or mental health treatment;
- No evidence of alcohol or drug abuse in the past 12 months and no current psychiatric problems noted; and
- No third-party risk issues identified in the case.

A recommendation for assignment to the administrative caseload is referred to the supervisor for review and approval. Parole cases may be placed in the administrative caseload only after approval by the Parole Commission.

Since direct contact with these cases is limited, special care must be given to the review of Written Monthly Reports and to patterns of payments on financial obligations. A current "Flash Notice" on file with the FBI is essential. Any evidence of a change in the offender's compliance with the conditions of supervision, risk to the community, or treatment needs will require the officer's immediate attention. A criminal record check is required before termination or expiration of these cases and at the time of the annual status review.

**Early Termination** [see Ch. V.A.22]. Early termination from supervision is recognition that the offender has achieved the objectives of supervision. Generally, an offender should have been assigned to the administrative caseload before being considered for early termination.

The criteria for early termination include:

- law-abiding behavior;
- full compliance with the conditions of supervision; and
- a responsible, productive lifestyle.

Unless otherwise directed by the court or Parole Commission, the officer should not request early termination unless the offender has met all the criteria for placement on the administrative caseload.

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## **Chapter V**

### **Violations of the Conditions of Supervision**

The conditions of supervision fix the behavioral limitations with which the offender must comply, and their consistent enforcement is necessary to execute the sentence, reduce risks, and promote effective correctional treatment. Failure to respond to violation behavior depreciates the credibility of the sentence and makes further violations more likely.

When a violation is detected, the officer is to respond with the least restrictive measures necessary to bring the offender into compliance in light of the seriousness of the violation, its implications for public safety, and the type and frequency of supervision strategies that were being employed at the time of the violation. Revocation is the most serious action and should be considered in the context of F.R.Crim.P.32.1 (see Notes of Advisory Committee), 18 U.S.C. section 4214(d), and the Policy Statements found in Chapter 7 of the *United States Sentencing Commission Guidelines Manual* (see Appendix G). Readers should be guided by Chapter 7 and the provisions here [see Ch. V.B].

#### ***Violations of Standard Conditions***

The standard conditions of supervision provide the basic framework for the supervision process. They enable the officer to keep informed of the conduct and conditions of the person under supervision as required by 18 U.S.C. section 3603, and they provide the tools necessary for the officer to intervene when problems that may foreshadow new criminal activity (e.g., alcohol abuse, criminal associations) first arise. Non-compliance with standard conditions must be addressed promptly, using all suitable methods to bring the offender into compliance.

Immediate reporting is required whenever the violation behavior makes the offender unavailable for supervision or constitutes a danger to the public. In assessing danger, the officer must be mindful of the offender's past pattern of criminal activities. Prompt reporting of violations that constitute a flagrant disregard for the conditions is also required.

Generally, technical violations resulting from unintentional and incidental behavior may be reported in periodic adjustment reports to the court or Parole Commission. The officer, however, must be familiar with local variations in reporting requirements, and those that are required by Volume X (Chapters V, Part B; VII, Part C; and IX, Part B) of the *Guide to Judiciary Policies and Procedures*, and the U.S. Parole Commission manual [see Ch. V.B.2].

## ***Violations of Special Conditions***

### ***Possession of Weapons***

There is a mandatory revocation for possession of a firearm while on probation which will be discussed later in this chapter. Other weapon violations should be reported immediately to the court or Parole Commission [see Ch. V.B.16].

### ***Fines***

Officers have a duty to report noncompliance with an installment or payment schedule ordered by the court. Additionally, the U.S. attorney may issue a notice of delinquency (18 U.S.C. section 3612(d)) if a payment is more than 30 days late (18 U.S.C. section 3572(h)) and issue a notice of default (18 U.S.C. section 3612(e)) if a payment is delinquent for more than 90 days (18 U.S.C. section 3572(l)). Officers are required to notify the court within 30 days of the issuance of a notice of default (18 U.S.C. section 3603(7)). Revocation may occur if there is a willful failure to pay a fine [see Ch. III.B.12].

### ***Restitution***

Officers have a duty to report noncompliance with an installment or payment schedule ordered by the court. In addition to other options under 18 U.S.C. section 3663(h), the U.S. attorney may issue a notice of delinquency and then default with respect to restitution. In this latter case, the officer should report the matter to the court as required for a fine under 18 U.S.C. section 3603(7). Again, revocation may occur if there is a willful failure to pay restitution [see Ch. III.B.3].

### ***Community Service***

Generally, community service is performed on a scheduled basis during the period of supervision. Unless otherwise directed, community service should begin immediately upon being placed on supervision. Failure by the offender to comply with an established schedule ordered either by the court or through the officer's instructions should be reported to the court immediately.

### ***Other Special Conditions***

Willful violations of the following special conditions of supervision also require an immediate report to the court or Parole Commission:

- Debt Obligations;
- Access to Financial Information;
- Home Confinement (including curfew);
- Occupational Restrictions;
- Substance Abuse Program Participation;

- Mental Health Program Participation;

### ***Violations of the Condition to Obey All Laws***

A violation of any Federal, state, or local law that is punishable by any term of imprisonment must be reported immediately to the court or Parole Commission. In making a recommendation regarding the issuance of a warrant, the officer must consider the risk posed by the new offense behavior. If it appears that the violation represents a significant threat to community safety or signals a risk of flight, the officer should recommend the issuance of a warrant. The officer must not wait for a conviction or final disposition to report the violation, but must submit dispositional information as soon as it becomes available. Revocation may be pursued even if a new conviction does not ensue, but it is essential that the criminal behavior be fully documented and that the standard of proof required by the jurisdictional authority be met. Proceedings of this nature should not be initiated without the supervisor's review and approval.

### ***Mandatory Revocations***

#### ***Mandatory Revocation of Probation for Possession of a Firearm***

Section 2414 of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. section 3565(b) to provide that probation must be revoked if, after a hearing pursuant to F.R.Crim.P.32.1, the court finds that a probationer had been in possession of a firearm as defined in 18 U.S.C. section 921(a)(3). Upon revocation, the court may impose any sentence that was available at the time of the initial sentence. The provision applies to all felons placed on probation and to misdemeanants on probation with a special condition prohibiting possession of a firearm, if they committed the offenses for which they were placed on probation on or after November 18, 1988 [see Ch. V.B.16].

#### ***Mandatory Revocation for Possession of Controlled Substance***

All terms of probation, supervised release, and parole which began on or after December 31, 1988, must include the condition that the offender not illegally possess a controlled substance; if violated, revocation is mandatory under 18 U.S.C. sections 3563 (a), 3583, and 4209. Probationers revoked under these provisions must be sentenced to not less than one-third of their original sentence (18 U.S.C. section 3565(a)), and revoked supervised releasees must serve one-third of the term of supervised release in prison (18 U.S.C. section 3583) [see Ch. V.B.17].

### ***Modification of the Conditions of Supervision***

Except where mandatory provisions control or when other compelling factors exist, the officer should consider whether or not a modification of the conditions of supervision would bring the offender into compliance and

serve the relevant purposes of sentencing. Modification can occur through consent of the supervisee or as the result of a hearing before the court or the Parole Commission.

A hearing and assistance of counsel are required unless the offender gives an informed consent to the modification or waiver of his or her right to a hearing. It is imperative that the offender not be coerced or misled and that the procedures followed be consistent with the accepted definitions of due process and informed consent in order to maintain the integrity of the process. Each probation office should review its practice and seek guidance from the court [see Ch. V.A.18].

### ***Revocation Procedures***

If there is probable cause to believe that a person under supervision has violated a condition, the probation officer's report may result in the issuance of a warrant for the arrest of a probationer/supervised releasee (18 U.S.C. section 3606) or a parolee (18 U.S.C. section 4213) [see Ch. V.B.8].

#### ***Revocation of Probation or Court-Ordered Supervised Release***

An officer ready to initiate revocation proceedings should prepare for submission to the court a petition for revocation action that separately lists each alleged violation and all elements necessary to establish its occurrence.

The officer must identify the condition of supervision which has allegedly been violated and include a complete and concise statement of facts. This will enable the offender and his or her counsel to prepare a defense. If the alleged violation is for a criminal conviction, the officer should report the disposition. The petition may contain a request that the court either issue a warrant for arrest or a summons for appearance before the court [see Ch. V.B.5].

**Arrest** [see Ch. V.B.10]. Procedures for effecting the arrest of a person under probation or supervised release are found at 18 U.S.C. section 3606. It provides that if there is probable cause to believe that a violation has occurred, the releasee may be arrested and, upon arrest, provided a hearing in the court having jurisdiction without unnecessary delay. Prior to requesting issuance of an arrest warrant, the officer is required fully to investigate and to document the violation(s). A collateral and simultaneous assessment of the seriousness of the violation(s) should also occur.

**Preliminary Hearing** [see Ch. V.B.12]. Procedures for the Preliminary hearing are set forth at F.R.Crim.P.32.1. They require:

- a prompt hearing before a judicial officer;
- notice to the person of the preliminary hearing and its purpose and of the alleged violation;
- an opportunity for the person to appear at the hearing and present evidence in his or her behalf;

- an opportunity, upon request, for the person to question witnesses against him or her unless there are no witnesses.
- notice of the person's right to be represented by counsel;
- that the preliminary hearings be on the record.

If probable cause is found to exist, the person is either held for a revocation hearing, or may be released pending the hearing pursuant to F.R.Crim.P.46(c).

**Revocation Hearing** [see Ch. V.B.13]. Procedures for the revocation hearing are set forth at F.R.Crim.P.32.1. They require that the hearing must be held within a reasonable period of time and that the person shall be given:

- written notice of the alleged violation of supervision;
- disclosure of evidence against the person;
- an opportunity to appear and present evidence;
- the opportunity to question adverse witnesses; and
- notice of the right to be represented by counsel.

The hearing is not formal, and the rules of evidence need not apply (see *Gagnon v. Scarpelli*, 411 U.S. at 785 (1973)).

The United States Sentencing Commission has issued policy statements which are found in Chapter 7 of the *United States Sentencing Commission Guidelines Manual*. Though policy statements are not binding, the officer is required by F.R.Crim.P. (Rule 32(C)(2)(B)) to advise the court of any pertinent policy statement. He or she is further required to submit to the Sentencing Commission such reports as are requested. Two forms developed by the Commission to gather data on the operation of its policy statements, one a violation worksheet, the other a summary of the violation hearing, must be completed and sent to the Commission in every case.

#### *Revocation of Parole*

The probation officer should comply with the specific procedures of the United States Parole Commission with respect to the revocation process. Refer to the United States Parole Commission Manual for further information.

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## **Chapter VI**

### **Roles in the Supervision Process**

The mission of the U.S. Probation System has been stated and emphasized throughout this monograph: Enforcing the conditions of supervision, reducing risk to the community, and making appropriate correctional treatment available to offenders. It is essential that all staff share a common understanding and commitment to this mission and that activities are coordinated to promote the effective achievement of its stated goals. The management and support staff of the system are in place to support the primary activities of the probation officer. Probation officers deserve competent and conscientious leadership from the managers of the system in support of their difficult and important duties.

It is the primary duty of the managers of the system to organize and allocate personnel, material, and financial resources to promote the accomplishment of the agency mission. Managers must work to ensure that officers have the time, the equipment, the training, and the incentive effectively to carry out the duties of the office of U.S. probation officer.

One obstacle to the effective achievement of the supervision mission is that the presentence investigation function tends to be more directly visible to the courts and, consequently, may receive greater managerial attention. The presentence report, however, is prepared under strict guidelines and generally is reviewed by the probation officer, the supervisor, attorneys for the government and the defense, and, finally, the judge before that report has any direct impact on the offender or on the community. On the other hand, a great deal of discretion is exercised by the officer in the supervision process. An officer's decision about a supervision intervention may be made in the field with little review by others, and the impact of that decision may affect the offender or the community for many years after the decision is made. The chief probation officer must ensure that, in fact and in appearance, supervision programs are not inappropriately relegated to secondary status to the more visible investigation and report-writing functions of the office [see Ch. IV.B].

#### ***Role of the Probation Officer***

Primary responsibility for accomplishing the mission of the agency falls to the probation officer. The duties of the probation officer, and the primary mission of the agency, are to enforce the conditions of supervision, to reduce the risk the offender poses to the community, and to provide the offender with access to correctional treatment, in that order of importance. The primary role of the officer will vary depending on the status of the case and the conduct of the offender [see Ch. 1.A.6].

### *Enforcing the Conditions of Supervision*

This is the first priority in the hierarchy of probation officer's supervision duties. The intent is to ensure that the sentence is executed according to the law and the orders of the court or Parole Commission. The performance of this duty requires the officer to verify compliance with the conditions of supervision through investigation of the status and conduct of the offender, timely confrontation of the offender when non-compliance is discovered, and enforcement of the conditions of the sentence by initiation of revocation action when investigation and confrontation have proven inadequate to compel compliance. Community supervision is not a passive program limited to the receipt of reports from the offender. The role of the officer is proactive, beginning with the provision of a written statement of the conditions of supervision and specific instructions regarding the expectation for compliance with those conditions. Personal verification of the offender's reports of his or her status are essential throughout the supervision term [see Ch. IV.A.3].

### *Risk Control*

Effort to reduce the risk the offender poses to the community is an ever-present duty of the probation officer. It, however, is considered secondary to enforcement of conditions because non-compliance with conditions requires officer intervention regardless of whether the offender poses an immediate risk of harm to the community.

Risk control activities address the elements of incapacitation and deterrence in sentences to probation or supervised release. In the performance of this duty, the probation officer must monitor the status and conduct of the offender in areas such as associations, travel, finances, and employment. The probation officer must actively enforce restrictions on the behavior of the offender.

### *Correctional Treatment*

Enforcement of conditions and risk control are priority goals in the supervision process, but effective correctional treatment may productively serve these prerequisite goals. Although third in the hierarchy, the correctional treatment duties of the probation officer are no less important once the other purposes of supervision are satisfied. Officers must, however, keep in mind that they have a statutory responsibility to employ only those methods not inconsistent with the conditions of release to improve the conduct and condition of the offender.

In the area of correctional treatment, the officer may provide direct guidance or may serve as a referral agent when the nature or the complexity of the treatment or service required exceeds the competence or the resources of the officer. If correctional treatment is provided by referral to another agency, the officer must serve as an adjunct to and directly support the treatment effort. Offenders present a wide range of treatment

problems which lend themselves to direct intervention by the probation officer. The supervision plan may call for assistance from the officer to resolve problems of housing, family discord, employment or educational deficiencies, or impulse control.

The officer's duty and authority under the law and his or her responsibility to the offender are limited to the clearer provision of *correctional* treatment. The officer's time is a scarce resource of the agency and must be used to the benefit of the public. Consequently, the officer should initiate intervention only when a problem, if left unresolved, will likely result in new crimes or other violation behavior.

### ***Role of the Supervisor***

The supervising U.S. probation officer occupies a key organizational position to exert substantial influence on the quality and effectiveness of the supervision program. Because of changing characteristics of caseloads and increased legal and administrative responsibilities, the supervision process is exceptionally demanding and complex for the officer and the manager. Through daily contact with the probation officers who actually perform the duties necessary to accomplish the mission of the agency, the supervisor instructs, monitors, motivates, and, in general, reinforces the importance of goal-directed activities.

Under the general direction of the chief and deputy chief, the supervisor is responsible for staff development, auditing, quality control, and consultation in the case decision-making process [see Ch. IV.A.2].

#### ***Staff Development***

One of the primary duties of the supervisor is to train subordinate staff. This activity is intended to ensure that probation officers are aware of their statutory duties and agency policy and know how to perform their duties in the most appropriate and effective manner. Staff training is the process by which instruction, opportunity to perform, and feedback are used to build and strengthen required job skills and knowledge. Training and staff development occur during the supervisor's day-to-day interaction with the probation officer, but the need for formal training may be indicated when there are significant changes in relevant law or procedures or when inappropriate interpretation of existing standards is observed.

The basic objectives of training in the supervision process are to ensure that officers (1) understand that their primary duties are to enforce the conditions of supervision, to reduce risk, and to provide correctional treatment and (2) have the skill and knowledge necessary to plan and implement supervision programs which adequately address these objectives.

#### ***Auditing and Quality Control***

Careful and comprehensive assessment, planning, and implementation of activities focused on the legitimate goals of supervision form the foundation

of the supervision program. Case audits and quality control reviews by the supervisor are the primary means by which these goals are achieved. Audits verify the presence and accuracy of the essential documents in the case file. Quality control reviews assess the substance of the supervision process (see Ch. IV.A.2).

**Case Audits** [see Ch. IV.A.2]. Title 18 U.S.C. section 3603 requires probation officers to keep records of their work. The supervisor must be thoroughly familiar with the record-keeping requirements and must audit case files to ensure compliance with these requirements. The case file audit has importance beyond determining that the content and the structure of the file are consistent with agency policy. The authority of the probation officer to supervise and restrict the activities of offenders is derived directly from the court or the Parole Commission. The relevant orders must be present in the file to legitimize the supervision activities of the officer. Problems of incomplete, inaccurate, or unclear orders detected during the case audit must be resolved immediately to avoid problems at a future date (e.g., complications with violation or transfer actions due to deficient records).

**Quality Control Reviews** [see Ch. IV.A.2]. The supervisor's quality control activities begin with the review of the officer's Case Supervision Plan. This review must ensure that relevant case supervision issues have been identified during the assessment process and that planned supervision activities appropriately focus on the three purposes of supervision. The Supervisor's Case Plan Review form has been designed to assist in this process (see Appendix H). The supervisor must also ensure that the implicit priorities of the supervision plan have been set in accordance with the hierarchical structure set forth in this monograph: enforcing conditions, then controlling risk, and, last, addressing the remaining correctional treatment issues.

The semiannual progress review provides the supervisor with another opportunity for a structured quality control review. During this process, the supervisor evaluates the progress in the case. The results of the evaluation are documented on the Supervisor's Case Plan Review form. If the progress or the status of the case is unacceptable, the supervisor attempts to determine if this results from the resistance of the offender or from the inadequacy of the development or implementation of the supervision plan. The appropriate measures of the success of the supervision program are the results achieved and the appropriateness of the officer's response rather than the quantity of effort devoted to supervising the offender. The probation system is accountable for the effectiveness and efficiency of the supervision program, and that accountability rests first with the officer and his supervisor.

The goal-directed supervision process set forth in this monograph must be more than an intellectual or paperwork exercise. It is essential to the effectiveness of the supervision process that the supervisor consistently reinforce the policies and procedures of the agency by requiring visible

results or modification, intensification, or revocation of supervision. Without consistent reinforcement of the established organizational goals, the intended goal-directed activities may be replaced by the many and varying orientations of individual officers.

#### *Consultation*

The dynamic nature of the supervision process and the infinite variety of problems offenders present require that probation officers exercise a great deal of discretion and independent judgment. Discretion is necessary to avoid rigid and stereotypical responses to supervision issues. However, excessive and unreviewed discretion may allow an officer's personal attitudes and philosophical biases to determine the nature of supervision activities and interventions. Difficult case decisions that significantly impact on the offender or the community should be made in consultation with the supervisor. The supervisor's competence to serve in the consulting role is founded on his or her broad base of experience, knowledge of and participation in the development of policies and procedures, and observation of successful supervision techniques employed by other probation officers. The supervisor is removed from direct, frustrating, long-term contact with a recalcitrant offender and may be able to provide the officer with a more objective view when critical decisions must be made.

The supervisor may serve as a valuable resource to the officer by joining the officer in direct contact with offenders who are reluctant to comply with conditions of supervision or who are otherwise resisting the supervision efforts of the officer. Such a meeting with the supervisor may forestall revocation proceedings and lend enhanced authority to future supervision efforts of the officer.

The probation officer is in a position personally to bring the power of the government and the law to bear on the property and liberty rights of persons under supervision. The authority of the probation officer is derived from the court, and that authority must be exercised in a judicious manner. The supervisor and the officer share responsibility for ensuring that, in fact and in appearance, that authority is exercised fairly and impartially with due regard for the legitimate goals of supervision, for the safety and welfare of the public, and for the rights of the offender.

#### *Role of the Chief Probation Officer*

The office of chief probation officer is created by statute with statutory responsibility for the direction of the work of all probation officers serving in the judicial district. Subordinate management positions, primarily deputy chiefs and supervisors, have been administratively created to assist the chief in the performance of his or her duties. The chief is responsible to the court, the Administrative Office of the U.S. Courts, and the Judicial Conference of the United States for the quality of supervision services and for

the effective and efficient use of resources allocated to the probation office in the judicial district.

The chief probation officer assists the court in recruiting and selecting the best qualified applicants to serve as U.S. probation officers and ensures that staff is well-trained in the skills necessary to accomplish the mission of the agency. As indicated above, some managerial duties such as training, staff development, auditing, quality control, and case consultation may be appropriately delegated to subordinate management personnel. Other duties have district-wide implications and require direct involvement of the chief. Prominent among these duties are program development and evaluation.

#### *Evaluating Operations*

The chief probation officer is responsible for the quality, effectiveness, and efficiency of probation operations in the judicial district. Formal evaluation of the work of the district is essential to the performance of this duty.

Among the statutory duties of the Director of the Administrative Office of the United States Courts is that he or his authorized agent shall investigate the work of probation officers and make recommendations concerning the same to the respective judges. Also, in the legitimate exercise of its oversight responsibilities, the Congress of the United States has periodically caused the General Accounting Office to investigate and evaluate the work of the Probation System. The effective chief probation officer should not be surprised by the findings resulting from these investigations and evaluations.

Formal evaluation occurs at various levels in the district. The supervisor evaluates the work of the individual officer in individual cases during the case review process. After a series of such reviews, the supervisor is able to evaluate that officer's work in general. In the same fashion, supervisors evaluate the work of all officers assigned to a unit, thereby evaluating the effectiveness and efficiency of the entire unit. It is the duty of the chief to pull together data from many sources in the district to evaluate the operations of the entire office. Local and national automated management information systems should be put to maximum use for comprehensive evaluation of probation operations.

The evaluation of probation operations should focus on the legitimate goals of the agency. Measures of the degree to which conditions of supervision are enforced, offender risk to the community is reduced, and correctional treatment is made available to offenders should form the basis of an evaluation program. The number of contacts with persons under supervision is a legitimate evaluative inquiry only to the extent that other information indicates that goals are not being met or resources are not being used effectively because of too little contact, too much contact, or contact of the wrong kind. Otherwise, evaluation should address the results of supervision efforts rather than the amount of activity devoted to the supervision function.

Formal program evaluation provides the manager with information on how well the office is functioning. This is more than an intellectual exercise. When evaluation indicates the existence of inefficiency, unnecessary duplication of services, or unsatisfactory program effectiveness, the manager must take corrective action. This action takes the form of program development, a second essential responsibility of the chief probation officer.

#### *Developing Programs*

Program development is the systematic decision-making process by which there is differential allocation of personnel, material, and financial resources to achieve maximum organizational effectiveness at minimum cost. The manager's effectiveness is directly related to the ability to analyze data, identify problems, and make appropriate adjustments to maximize organizational performance.

Program development activities may range from the relatively simple decision to assign work by geographic area to reduce duplication in travel requirements to sophisticated programs with written program designs and formal evaluation components. Examples of the latter programs include community resource management teams and specialized drug treatment or employment development units.

Regardless of the complexity of the problems identified and the sophistication of the programs developed to resolve those problems, the process of program development is essentially the same. This process includes:

- identifying the problem;
- identifying and analyzing the alternative solutions;
- designing and implementing the program; and
- followup evaluation of the program.

Identification of the problem will be the initial step in all program development activities. This is followed by an analysis of alternative solutions. It may be that training or supervisory emphasis on compliance with existing procedures will be a sufficient response, with no need to develop or modify programs. When alternatives are being considered, the manager must be sensitive to the impact of the program under consideration on the organization as a whole. Resources diverted to resolve one problem should not result in the creation of problems in another part of the organization.

Careful attention must be given to program implementation. Even an exceptionally well-designed program will have little chance of success if there is inadequate commitment from the staff members who will be responsible for carrying it out. Input from staff members should be solicited and considered at all stages of the program development process. The purpose and goal of the program and the anticipated impact of the program on the organization as a whole should be communicated to the staff.

Evaluation provides an indication of the existence of problems that require development or modification of programs. Followup evaluation of new programs is essential to measure the actual performance against desired performance. This evaluation will suggest to management the need to continue, expand, modify, or terminate a new program.

Experience and formal district evaluations have indicated that certain supervision programs significantly improve the quality of supervision services and should be considered for implementation whenever possible. Among these are:

- functional specialization of officers or units in supervision or investigations;
- specialized supervision caseloads by offender types, i.e., drug abusers, career criminals, etc.; and
- management programs to promote effective field supervision, e.g., structured field hours or days, flex-time work schedules, supervisor field reviews, and incentives and recognition for exceptional field supervision work.

These programs promote effective and efficient service delivery, provide for the opportunity to match officer interest and ability to specialized tasks, and strengthen liaison with law enforcement and social service agencies in the areas of specialization.

Although many of the day-to-day management duties in the probation office are delegated to supervising U.S. probation officers, the overall responsibility for the quality of probation operations may not be delegated by the chief. The chief has the primary and affirmative duty to the court and to the public to assure that the best quality services are delivered at the least cost to the taxpayer. Through formal program evaluation, the chief maintains awareness of the effectiveness of office operations and indirectly indicates the degree of importance he or she places on those activities being evaluated. Program development is the means by which the chief fine tunes the organization to maintain the quality and relevance of activities performed by subordinate staff. The extent to which the chief is able to organize and allocate limited resources, and to remove obstacles to the probation officers' efforts to accomplish the mission of the agency, will determine the quality of the management and leadership of the Probation System.

## **APPENDICES**

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APPENDIX A

RISK PREDICTION SCALE (RPS 80)

NAME	PROBATION OFFICER	DATE
------	-------------------	------

I. Automatic Assignment

If "yes" is checked for both A and B, place in Low Activity Supervision.

A) Individual has completed high school education

YES  NO

B) Individual has history free of opiate usage

YES  NO

II. Risk Score Determination

If not automatically assigned, use items C through G to determine risk score and supervision activity level.

C) Twenty-eight years or older at time of instant conviction ..... (7) \_\_\_\_

D) Arrest-free period of five (5) or more consecutive years ..... (4) \_\_\_\_

E) Few prior arrests (none, one, or two) ..... (10) \_\_\_\_

F) History free of opiate usage ..... (9) \_\_\_\_

G) At least four (4) months steady employment prior to arraignment for present offense ..... (3) \_\_\_\_

SUM OF POINTS (33) \_\_\_\_

RISK SCORE RANGE

SUPERVISION LEVEL

Automatic Assignment  
or  
20-33



Low Activity

0-19



High Activity

**APPENDIX B**

Name: \_\_\_\_\_ Docket No.: \_\_\_\_\_ Date: \_\_\_\_\_

*[Note: The following is only an estimate of the parole guideline range as the U.S. Parole Commission will compute the actual parole guideline range at the time of the parole hearing.]*

Offense Severity Rating is assessed as Category \_\_\_\_\_ because \_\_\_\_\_

**SALIENT FACTORS**

- A. PRIOR CONVICTIONS/ADJUDICATIONS (*ADULT OR JUVENILE*) .....
- None = 3; One = 2; Two or three = 1; Four or more = 0
- B. PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS (*ADULT OR JUVENILE*) .....
- None = 2; One or two = 1; Three or more = 0
- C. AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS .....
- Age at commencement of the current offense:  
26 years of age or more = 2\*\*\*; 20-25 years of age = 1\*\*\*;  
19 years of age or less = 0
- \*\*\* EXCEPTION: If five or more prior commitments of more than  
thirty days (*adult or juvenile*), place an "x" here \_\_\_\_\_  
and score this item = 0
- D. RECENT COMMITMENT FREE PERIOD (*THREE YEARS*) .....
- No prior commitment of more than thirty days (*adult or juvenile*) or  
released to the community from last such commitment at least three years  
prior to the commencement of the current offense = 1; Otherwise = 0
- E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME .....
- Neither on probation, parole, confinement, or escape status at the time  
of the current offense; nor committed as a probation, parole, confinement,  
or escape status violator this time = 1; Otherwise = 0
- F. HEROIN/OPIATE DEPENDENCE .....
- No history of heroin/opiate dependence = 1; Otherwise = 0
- TOTAL SCORE** .....

Estimated Guideline Range \_\_\_\_\_ months.

Particularly Aggravating/Mitigating Factors (Optional): \_\_\_\_\_

January, 1991

## APPENDIX C

Locator \_\_\_\_\_

**INITIAL CASE SUPERVISION PLAN**

NAME \_\_\_\_\_ PO: \_\_\_\_\_

TYPE CASE  PTD  Prob  Mag.Prob  Par  Mil. Par  MR  SPT  Sup. Rel.  Furlough

DATE RECEIVED \_\_\_\_\_ EXPIRATION DATE \_\_\_\_\_

PLAN FOR PERIOD OF \_\_\_\_\_ TO \_\_\_\_\_

OFFENSE \_\_\_\_\_

**ENFORCING COURT-ORDERED SANCTIONS****SPECIAL FINANCIAL, SERVICE, AND CONFINEMENT CONDITIONS IN EFFECT  NONE**

- |  |   |
|--|---|
| <input type="checkbox"/> Special Assessment Balance \$ _____       | <input type="checkbox"/> Restitution Balance \$ _____           |
| <input type="checkbox"/> Payments of \$ _____ per _____ OR         | <input type="checkbox"/> Payments of \$ _____ per _____ OR      |
| <input type="checkbox"/> Due in full by: _____                     | <input type="checkbox"/> Due in full by: _____                  |
| <input type="checkbox"/> Fine Balance \$ _____                     | <input type="checkbox"/> Community Service Balance _____ Hours  |
| <input type="checkbox"/> Payments of \$ _____ per _____ OR         | <input type="checkbox"/> Scheduled for _____ hrs. per _____ OR  |
| <input type="checkbox"/> Due in full by: _____                     | <input type="checkbox"/> To be completed by: _____              |
| <input type="checkbox"/> Home Confinement for Period of _____ Days | <input type="checkbox"/> CCC Placement for Period of _____ Days |
| <input type="checkbox"/> Other                                     | <input type="checkbox"/> Other                                  |

**SUPERVISION ACTIVITIES**

## Projected Frequency &amp; Type

## Projected Frequency &amp; Type

- |   |       |  |       |
|---|-------|--|-------|
| <input type="checkbox"/> Verify Special Assessment Payment    | _____ | <input type="checkbox"/> Verify Restitution Payments           | _____ |
| <input type="checkbox"/> Verify Fine Payments                 | _____ | <input type="checkbox"/> Verify Community Service Hours        | _____ |
| <input type="checkbox"/> Verification of Home Confinement by: | _____ | <input type="checkbox"/> Contact with CCC to verify Compliance | _____ |
| <input type="checkbox"/> Electronic Monitoring                | _____ | <input type="checkbox"/> _____                                 | _____ |
| <input type="checkbox"/> Unannounced home contacts            | _____ | <input type="checkbox"/> _____                                 | _____ |
| <input type="checkbox"/> Telephone                            | _____ | <input type="checkbox"/> _____                                 | _____ |

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**THIRD PARTY RISK** NONE

- |   |  |
|---|--|
| <input type="checkbox"/> Risk of Physical Harm to:<br>_____ | <input type="checkbox"/> Risk of Financial Harm to:<br>_____ |
| Notify:<br>_____  | Notify:<br>_____   |

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**RISK CONTROL**

RPS-80 \_\_\_\_\_ OR SFS \_\_\_\_\_

**SPECIAL RISK CONTROL CONDITIONS IN EFFECT** **NONE**

- Restricted Employment \_\_\_\_\_  
 Restricted Activities \_\_\_\_\_  
 Financial Disclosure

- Restricted Travel \_\_\_\_\_  
 Search of Offender's Person/Residence/Car  
 Urine Surveillance

**RISK-RELATED PROBLEM AREAS IDENTIFIED** **NONE**

- Employment  
 Financial  
 Residence  
 Criminal Activity while under Supervision

- History of Substance Abuse  
 History of Mental Health Problems  
 Pending Charges  
 Violence

- Pattern of Similar Criminal Activity  
 Criminal Associations  
 Risk-Related Travel

**SUPERVISION ACTIVITIES****Monitoring Employment**

Projected Frequency &amp; Type

- Collateral Contact with Employer \_\_\_\_\_  
 Review of Pay Stubs \_\_\_\_\_

**Monitoring Finances**

Projected Frequency &amp; Type

- Review Major Purchase Agreements \_\_\_\_\_  
 Credit Bureau Check \_\_\_\_\_  
 Check Bank Records \_\_\_\_\_  
 Examination of Business Records \_\_\_\_\_  
 Examination of Tax Returns \_\_\_\_\_  
 Verify Alimony/Child Support \_\_\_\_\_

**Monitoring Living Situation**

Projected Frequency &amp; Type

- On-site Examination of Living Situation \_\_\_\_\_  
 Contact Family/Significant Others \_\_\_\_\_  
 \_\_\_\_\_

**Monitoring for Law Violation**

Projected Frequency &amp; Type

- Criminal Record Check \_\_\_\_\_  
 Contact Local Law Enforcement \_\_\_\_\_  
 Contact Original Arresting Agency \_\_\_\_\_  
 Check Vehicle Registrations \_\_\_\_\_  
 Review Telephone Toll Records \_\_\_\_\_  
 Surveillance of Offender and Associates \_\_\_\_\_  
 Verify Status of Pending Charges \_\_\_\_\_  
 Unscheduled Urine Collections \_\_\_\_\_  
 Search of offender's person/residence/car given legal cause \_\_\_\_\_

- Restrict Travel \_\_\_\_\_

- \_\_\_\_\_

- \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

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**CORRECTIONAL TREATMENT**

<b>SPECIAL CONDITIONS IN EFFECT</b>		<input type="checkbox"/> <b>NONE</b>	
<input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Complete Educational/Vocational Program		<input type="checkbox"/> Mental Health Treatment <input type="checkbox"/> Obtain/Maintain Employment <input type="checkbox"/>	
<b>PROBLEM AREAS IDENTIFIED</b>		<input type="checkbox"/> <b>NONE</b>	
<input type="checkbox"/> Substance Abuse <input type="checkbox"/> Education/Vocational Training <input type="checkbox"/> Mental/Emotional		<input type="checkbox"/> Physical Health <input type="checkbox"/> Employment <input type="checkbox"/> Financial/Budgeting	<input type="checkbox"/> Family/Marital <input type="checkbox"/> Basic Subsistence <input type="checkbox"/>
<b>SUPERVISION ACTIVITIES</b>			
<b>Substance Abuse</b> <input type="checkbox"/> Referral for Drug/Alcohol Treatment to: _____  <input type="checkbox"/> Contact with treatment agency _____ <input type="checkbox"/> Drug/Alcohol Treatment Provided by PO			
<b>Education/Vocational Training</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____ <input type="checkbox"/> Assistance Provided by PO _____			
<b>Mental/Emotional</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____ <input type="checkbox"/> Assistance Provided by PO _____ <input type="checkbox"/> Contact with Family _____			
<b>Medical</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____			
<b>Employment</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____ <input type="checkbox"/> Assistance Provided by PO _____			
<b>Financial/Budgeting</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____ <input type="checkbox"/> Assistance Provided by PO _____			
<b>Family/Marital</b> <input type="checkbox"/> Referral for Services to: _____  <input type="checkbox"/> Contact with agency _____ <input type="checkbox"/> Assistance Provided by PO _____ <input type="checkbox"/> Contact with Family _____			
<b>Basic Subsistence</b> <input type="checkbox"/> Referral for Housing/Food/Clothing Services to: _____  <input type="checkbox"/> Contact with agency _____			
Abbreviations: FREQUENCY: W=Weekly M=Monthly Q=Quarterly S=Semi-annually TYPE: P=Personal T=Telephone D=Documents			
<input type="checkbox"/> No Supervision issues identified. Verify eligibility for administrative caseload or early termination.			

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**U.S. PROBATION OFFICER****DATE****SUSPO APPROVAL****DATE**

**APPENDIX D**

January, 1991

**SEMI-ANNUAL STATUS REPORT AND REVISED PLAN**

Review Period from \_\_\_\_\_ TO \_\_\_\_\_

Case Name \_\_\_\_\_

**PART 1 - SUPERVISION ISSUES**

<b>SUPERVISION ISSUES IDENTIFIED</b>	<b>STATUS OF SUPERVISION ISSUES</b>	
	<b>A. Was issue resolved? (Y/N)</b>	<b>B. If no, does status of issue require a change in the plan? (Y/N)</b>
Court Ordered Sanctions		
Risk Control		
Correctional Treatment		

**PART 2 - OFFENDER'S COMPLIANCE**

Special Assessment Ordered: \$\_\_\_\_\_ Balance: \_\_\_\_\_ On Schedule? \_\_\_\_\_ (Y/N)

Fine Ordered: \$\_\_\_\_\_ Balance: \$\_\_\_\_\_ In Default? \_\_\_\_\_ (Y/N)

Restitution Ordered: \$\_\_\_\_\_ Balance: \$\_\_\_\_\_ In Default? \_\_\_\_\_ (Y/N)

Community Service Ordered: \_\_\_\_\_ Hrs Balance: \_\_\_\_\_ On Schedule? \_\_\_\_\_ (Y/N)

Urinalysis: Phase \_\_\_\_\_ # Stalls \_\_\_\_\_ # Samples Taken \_\_\_\_\_ # Positive \_\_\_\_\_

Other Technical Violation \_\_\_\_\_ (Y/N) Arrests/Convictions \_\_\_\_\_ (Y/N)

Were all violations reported to Court or Parole Commission? \_\_\_\_\_ (Y/N)

Source of Income \_\_\_\_\_ Average Monthly Income \$\_\_\_\_\_

### **PART 3 - OFFICER'S COMMENTS**

## APPENDIX E

January, 1991

Case Name \_\_\_\_\_

Locator \_\_\_\_\_

**PART 4: REVISED CASE PLAN**

FOR PERIOD OF \_\_\_\_\_ TO \_\_\_\_\_

**ENFORCING COURT-ORDERED SANCTIONS****SPECIAL FINANCIAL, SERVICE, AND CONFINEMENT CONDITIONS IN EFFECT  NONE**

- Special Assessment Balance \$ \_\_\_\_\_  
 Payments of \$ \_\_\_\_\_ per \_\_\_\_\_ OR  
 Due in full by: \_\_\_\_\_  
 Fine Balance \$ \_\_\_\_\_  
 Payments of \$ \_\_\_\_\_ per \_\_\_\_\_ OR  
 Due in full by: \_\_\_\_\_  
 Home Confinement for Period of \_\_\_\_\_ Days  
 Other

- Restitution Balance \$ \_\_\_\_\_  
 Payments of \$ \_\_\_\_\_ per \_\_\_\_\_ OR  
 Due in full by: \_\_\_\_\_  
 Community Service Balance \_\_\_\_\_ Hours  
 Scheduled for \_\_\_\_\_ hrs. per \_\_\_\_\_ OR  
 To be completed by: \_\_\_\_\_  
 CCC Placement for Period of \_\_\_\_\_ Days  
 Other

**SUPERVISION ACTIVITIES**

- Projected Frequency & Type  
 Verify Special Assessment Payment \_\_\_\_\_  
 Verify Fine Payments \_\_\_\_\_  
 Verification of Home Confinement by:  
 Electronic Monitoring \_\_\_\_\_  
 Unannounced home contacts \_\_\_\_\_  
 Telephone \_\_\_\_\_

- Projected Frequency & Type  
 Verify Restitution Payments \_\_\_\_\_  
 Verify Community Service Hours \_\_\_\_\_  
 Contact with CCC to verify Compliance \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**THIRD PARTY RISK  NONE**

- Risk of Physical Harm to:  
 \_\_\_\_\_  
 Notify: \_\_\_\_\_
- Risk of Financial Harm to:  
 \_\_\_\_\_  
 Notify: \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**RISK CONTROL**

RPS-80 \_\_\_\_\_ OR SFS \_\_\_\_\_

**SPECIAL RISK CONTROL CONDITIONS IN EFFECT** **NONE**

- Restricted Employment \_\_\_\_\_  
 \_\_\_\_\_  
 Restricted Activities \_\_\_\_\_  
 \_\_\_\_\_  
 Financial Disclosure

- Restricted Travel \_\_\_\_\_  
 \_\_\_\_\_  
 Search of Offender's Person/Residence/Car  
 Urine Surveillance

**RISK-RELATED PROBLEM AREAS IDENTIFIED** **NONE**

- Employment  
 Financial  
 Residence  
 Criminal Activity while under Supervision

- History of Substance Abuse  
 History of Mental Health Problems  
 Pending Charges  
 Violence

- Pattern of Similar Criminal Activity  
 Criminal Associations  
 Risk-Related Travel

**SUPERVISION ACTIVITIES****Monitoring Employment**

Projected Frequency &amp; Type \_\_\_\_\_

- Collateral Contact with Employer  
 Review of Pay Stubs

**Monitoring Finances**

Projected Frequency &amp; Type \_\_\_\_\_

- Review Major Purchase Agreements  
 Credit Bureau Check  
 Check Bank Records  
 Examination of Business Records  
 Examination of Tax Returns  
 Verify Alimony/Child Support

**Monitoring Living Situation**

Projected Frequency &amp; Type \_\_\_\_\_

- On-site Examination of Living Situation  
 Contact Family/Significant Others  
 \_\_\_\_\_

**Monitoring for Law Violation**

Projected Frequency &amp; Type \_\_\_\_\_

- Criminal Record Check  
 Contact Local Law Enforcement  
 Contact Original Arresting Agency  
 Check Vehicle Registrations  
 Review Telephone Toll Records  
 Surveillance of Offender and Associates  
 Verify Status of Pending Charges  
 Unscheduled Urine Collections  
 Search of offender's person/residence/car given legal cause

 **Restrict Travel** \_\_\_\_\_

- 

**COMMENTS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CORRECTIONAL TREATMENT****SPECIAL CONDITIONS IN EFFECT** **NONE**

- Alcohol Treatment  
 Drug Treatment  
 Complete Educational/Vocational Program

- Mental Health Treatment  
 Obtain/Maintain Employment

- Substance Abuse  
 Education/Vocational Training  
 Mental/Emotional

- Physical Health  
 Employment  
 Financial/Budgeting

- Family/Marital  
 Basic Subsistence

 **NONE****SUPERVISION ACTIVITIES****Substance Abuse**

- Referral for Drug/Alcohol Treatment to: \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with treatment agency \_\_\_\_\_  
 Drug/Alcohol Treatment Provided by PO \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_  
 Assistance Provided by PO \_\_\_\_\_

**Education/Vocational Training**

- Referral for Services to: \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_  
 Assistance Provided by PO \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_  
 Assistance Provided by PO \_\_\_\_\_

**Mental/Emotional**

- Referral for Services to: \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_  
 Assistance Provided by PO \_\_\_\_\_  
 Contact with Family \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_  
 Assistance Provided by PO \_\_\_\_\_  
 Contact with Family \_\_\_\_\_

**Medical**

- Referral for Services to: \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_

Projected Frequency &amp; Type

- Contact with agency \_\_\_\_\_

Abbreviations: FREQUENCY: W=Weekly M=Monthly Q=Quarterly S=Semi-annually A=Annually TYPE: P=Personal T=Telephone D=Documents

No Supervision issues identified. Verify eligibility for administrative caseload or early termination.

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

U.S. PROBATION OFFICER

DATE

SUSPO APPROVAL

DATE

**APPENDIX F**  
**U.S. PROBATION OFFICE**  
**MONTHLY SUPERVISION REPORT FOR THE MONTH OF \_\_\_\_\_, 19\_\_\_\_\_.**

Name:	Court Name ( <i>If different</i> ):		
-------	-------------------------------------	--	--

**PART A: RESIDENCE (*If new address, attach copy of lease/purchase agreement*)**

Street Address, Apt. Number:	Home Phone:	Pager Phone:	Other Phone:
------------------------------	-------------	--------------	--------------

City, State, Zip Code:	Persons Living with you:
------------------------	--------------------------

Complex/Subdivision:	Own or Rent?	Did you move during the month? <input type="checkbox"/> Yes <input type="checkbox"/> No
----------------------	--------------	---

Mailing Address ( <i>If different</i> ):	If yes, date moved: _____	Reason for Moving:
--	---------------------------	--------------------

**PART B: EMPLOYMENT (*If unemployed, list source of support under Part D*)**

Name, Address, Phone No. of Employer:	Name of immediate supervisor:	Is your employer aware of your criminal status? <input type="checkbox"/> Yes <input type="checkbox"/> No
---------------------------------------	-------------------------------	--

		How many days of work did you miss? _____ Why?
--	--	--

		Position Held: _____ Gross Income: _____ Normal Work Hours: _____
--	--	---

Did you change jobs?  Yes  No If changed jobs or terminated, state when and why:  
 Were you terminated?  Yes  No

**PART C: VEHICLES (*List all vehicles owned or driven by you*)**

1. Year/make/model:	Color:	Tag Number:	Owner:
2. Year/make/model:	Color:	Tag Number:	Owner:

**PART D: MONTHLY FINANCIAL STATEMENT**

Net Income From Employment <i>(Attach proof of earnings)</i>	Past Due Debts:	Amount Past Due:
---	-----------------	------------------

Other Income:		
---------------	--	--

TOTAL MONTHLY INCOME		
----------------------	--	--

TOTAL MONTHLY EXPENSES		
------------------------	--	--

Do you have a checking account? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you have a savings account? <input type="checkbox"/> Yes <input type="checkbox"/> No
--	---

<input type="checkbox"/> Individual <input type="checkbox"/> Joint    Balance: _____	<input type="checkbox"/> Individual <input type="checkbox"/> Joint    Balance: _____
--	--

Bank Name: _____	Bank Name: _____
------------------	------------------

Account Number: _____	Account Number: _____
-----------------------	-----------------------

List all purchases of individual goods or services for which you paid \$500 or more:

Date	Amount	Method of Payment	Description of Item
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PART E: COMPLIANCE WITH CONDITIONS OF SUPERVISION DURING THE PAST MONTH**

Were you questioned by any law enforcement officers?  
 Yes  No  
If yes, date: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Reason: \_\_\_\_\_

Were you arrested or named as a defendant in any criminal case?  
 Yes  No  
If yes, when & where? \_\_\_\_\_  
Charges: \_\_\_\_\_  
Disposition: \_\_\_\_\_

(Attach copy of citation, receipt, charges, disposition, etc)

Were any pending charges disposed of during the month?  
 Yes  No  
If yes, date: \_\_\_\_\_  
Court: \_\_\_\_\_  
Disposition: \_\_\_\_\_

Was anyone in your household arrested or questioned by law enforcement?  
 Yes  No  
If yes, whom? \_\_\_\_\_  
Reason: \_\_\_\_\_  
Disposition: \_\_\_\_\_

Did you have any contact with anyone having a criminal record?  
 Yes  No  
If yes, whom? \_\_\_\_\_

Did you possess or have access to a firearm?  
 Yes  No  
If yes, why? \_\_\_\_\_

Did you possess or use any illegal drugs?  
 Yes  No  
If yes, type of drug: \_\_\_\_\_

Did you travel outside the district without permission?  
 Yes  No  
If yes, when and where? \_\_\_\_\_

Do you have a special assessment, restitution or fine?  
 Yes  No -- If yes, amount paid during this month:

Special assessment: \_\_\_\_\_

Restitution: \_\_\_\_\_

Fine: \_\_\_\_\_

**NOTE: ALL PAYMENTS TO BE MADE BY MONEY ORDER (POSTAL OR BANK) OR CASHIER'S CHECK ONLY.**

Do you have community service work to perform?  
 Yes  No  
Number of hours completed this month: \_\_\_\_\_  
Number of hours missed: \_\_\_\_\_  
Balance of hours remaining: \_\_\_\_\_

Do you have drug, alcohol or mental health aftercare?  
 Yes  No  
If yes, did you miss any sessions during the month?  
 Yes  No  
Did you fail to respond to phone recorder instructions?  
 Yes  No  
If yes, why? \_\_\_\_\_

**WARNING: ANY FALSE STATEMENT MAY RESULT IN REVOCATION OF PROBATION, SUPERVISED RELEASE OR PAROLE, IN ADDITION TO 5 YEARS IMPRISONMENT, A \$250,000 FINE OR BOTH.  
(18 U.S.C. § 1001)**

I CERTIFY THAT ALL INFORMATION FURNISHED IS COMPLETE AND CORRECT.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

REMARKS:

RECEIVED:

\_\_\_\_\_  
Mail \_\_\_\_\_ OC \_\_\_\_\_

\_\_\_\_\_  
HC \_\_\_\_\_ CC \_\_\_\_\_

RETURN TO:

**United States  
Sentencing Commission**

**Policy Statements for  
Violations of Probation and Supervised Release**

**November 1, 1990**

*[Reproducing Chapter Seven of the United States Sentencing Commission Guidelines Manual and additional supplementary material]*

UNITED STATES SENTENCING COMMISSION  
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Ilene H. Nagel  
Benjamin F. Baer (ex officio)  
Paul L. Maloney (ex officio)



November 1, 1990

Dear Chief United States Probation Officers:

The Commission is pleased to provide United States Probation Officers with this booklet designed to facilitate application of the Commission's policy statements for violation of probation and supervised release. The policy statements reproduced here are identical to those found in Chapter Seven of the *Guidelines Manual* incorporating amendments effective November 1, 1990. This document is not intended to replace the Manual and is presented in this format solely as a convenience to probation officers.

The booklet contains the revocation policy statements, pertinent statutory provisions, revocation worksheets, and a form for summarizing the violation hearing. The Commission attempted to draft revocation policy statements that are readily understandable and require a minimum of formal training. However, if you feel that your district requires Commission assistance in training, please contact Jay Meyer at (202) 626-8500. Additionally, the Commission's Technical Assistance Service (hotline) is prepared to answer questions regarding application of the policy statements.

The Commission views these policy statements as evolutionary and plans to issue revocation guidelines after federal judges, probation officers, practitioners, and others have had the opportunity to comment. Therefore, it is essential to the Commission's evaluation of these policy statements that probation officers submit the following information to the Commission on all revocation proceedings:

- revocation worksheets submitted to the court
- violation report submitted to the court
- summary of violation form
- judgement order

We encourage officers to direct their suggestions and written comments to Paul Martin, the Commission's Communications Director, at 1331 Pennsylvania Avenue, N.W., Suite 1400, Washington, D.C., 20004.

The Commission greatly appreciates your continued assistance in improving the sentencing guidelines. Thank you.

Sincerely,

WILLIAM W. WILKINS, JR.  
Chairman

Enclosure

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## **CHAPTER SEVEN - VIOLATIONS OF PROBATION AND SUPERVISED RELEASE**

### **PART A - INTRODUCTION TO CHAPTER SEVEN**

#### **1. Authority**

Under 28 U.S.C. § 994(a)(3), the Sentencing Commission is required to issue guidelines or policy statements applicable to the revocation of probation and supervised release. At this time, the Commission has chosen to promulgate policy statements only. These policy statements will provide guidance while allowing for the identification of any substantive or procedural issues that require further review. The Commission views these policy statements as evolutionary and will review relevant data and materials concerning revocation determinations under these policy statements. Revocation guidelines will be issued after federal judges, probation officers, practitioners, and others have the opportunity to evaluate and comment on these policy statements.

#### **2. Background**

##### **(a) Probation**

Prior to the implementation of the federal sentencing guidelines, a court could stay the imposition or execution of sentence and place a defendant on probation. When a court found that a defendant violated a condition of probation, the court could continue probation, with or without extending the term or modifying the conditions, or revoke probation and either impose the term of imprisonment previously stayed, or, where no term of imprisonment had originally been imposed, impose any term of imprisonment that was available at the initial sentencing.

The statutory authority to "suspend" the imposition or execution of sentence in order to impose a term of probation was abolished upon implementation of the sentencing guidelines. Instead, the Sentencing Reform Act recognized probation as a sentence in itself. 18 U.S.C. § 3561. Under current law, if the court finds that a defendant violated a condition of probation, the court may continue probation, with or without extending the term or modifying the conditions, or revoke probation and impose any other sentence that initially could have been imposed. 18 U.S.C. § 3565. For certain violations, revocation is required by statute.

##### **(b) Supervised Release**

Supervised release, a new form of post-imprisonment supervision created by the Sentencing Reform Act, accompanied implementation of the guidelines. A term of supervised release may be imposed by the court as a part of the sentence of imprisonment at the time of initial sentencing. 18 U.S.C. § 3583(a). Unlike parole, a term of supervised release does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the court. Accordingly, supervised release is more analogous to the additional "special parole term" previously authorized for certain drug offenses.

With the exception of intermittent confinement, which is available only for a sentence of probation, the conditions of supervised release authorized by statute are the same as those for a sentence of probation. When the court finds that the defendant violated a condition of

supervised release, it may continue the defendant on supervised release, with or without extending the term or modifying the conditions, or revoke supervised release and impose a term of imprisonment. The periods of imprisonment authorized by statute for a violation of the conditions of supervised release generally are more limited, however, than those available for a violation of the conditions of probation. 18 U.S.C. § 3583(e)(3).

### **3. Resolution of Major Issues**

#### **(a) Guidelines versus Policy Statements.**

At the outset, the Commission faced a choice between promulgating guidelines or issuing advisory policy statements for the revocation of probation and supervised release. After considered debate and input from judges, probation officers, and prosecuting and defense attorneys, the Commission decided, for a variety of reasons, initially to issue policy statements. Not only was the policy statement option expressly authorized by statute, but this approach provided greater flexibility to both the Commission and the courts. Unlike guidelines, policy statements are not subject to the May 1 statutory deadline for submission to Congress, and the Commission believed that it would benefit from the additional time to consider complex issues relating to revocation guidelines provided by the policy statement option.

Moreover, the Commission anticipates that, because of its greater flexibility, the policy statement option will provide better opportunities for evaluation by the courts and the Commission. This flexibility is important, given that supervised release as a method of post-incarceration supervision and transformation of probation from a suspension of sentence to a sentence in itself represent recent changes in federal sentencing practices. After an adequate period of evaluation, the Commission intends to promulgate revocation guidelines.

#### **(b) Choice Between Theories.**

The Commission debated two different approaches to sanctioning violations of probation and supervised release.

The first option considered a violation resulting from a defendant's failure to follow the court-imposed conditions of probation or supervised release as a "breach of trust." While the nature of the conduct leading to the revocation would be considered in measuring the extent of the breach of trust, imposition of an appropriate punishment for any new criminal conduct would not be the primary goal of a revocation sentence. Instead, the sentence imposed upon revocation would be intended to sanction the violator for failing to abide by the conditions of the court-ordered supervision, leaving the punishment for any new criminal conduct to the court responsible for imposing the sentence for that offense.

The second option considered by the Commission sought to sanction violators for the particular conduct triggering the revocation as if that conduct were being sentenced as new federal criminal conduct. Under this approach, offense guidelines in Chapters Two and Three of the Guidelines Manual would be applied to any criminal conduct that formed the basis of the violation, after which the criminal history in Chapter Four of the Guidelines Manual would be recalculated to determine the appropriate revocation sentence. This option would also address a violation not constituting a criminal offense.

After lengthy consideration, the Commission adopted an approach that is consistent with the theory of the first option; i.e., at revocation the court should sanction primarily the defendant's breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator.

The Commission adopted this approach for a variety of reasons. First, although the Commission found desirable several aspects of the second option that provided for a detailed revocation guideline system similar to that applied at the initial sentencing, extensive testing proved it to be impractical. In particular, with regard to new criminal conduct that constituted a violation of state or local law, working groups expert in the functioning of federal criminal law noted that it would be difficult in many instances for the court or the parties to obtain the information necessary to apply properly the guidelines to this new conduct. The potential unavailability of information and witnesses necessary for a determination of specific offense characteristics or other guideline adjustments could create questions about the accuracy of factual findings concerning the existence of those factors.

In addition, the Commission rejected the second option because that option was inconsistent with its views that the court with jurisdiction over the criminal conduct leading to revocation is the more appropriate body to impose punishment for that new criminal conduct, and that, as a breach of trust inherent in the conditions of supervision, the sanction for the violation of trust should be in addition, or consecutive, to any sentence imposed for the new conduct. In contrast, the second option would have the revocation court substantially duplicate the sanctioning role of the court with jurisdiction over a defendant's new criminal conduct and would provide for the punishment imposed upon revocation to run concurrently with, and thus generally be subsumed in, any sentence imposed for that new criminal conduct.

Further, the sanctions available to the courts upon revocation are, in many cases, more significantly restrained by statute. Specifically, the term of imprisonment that may be imposed upon revocation of supervised release is limited by statute to not more than five years for persons convicted of Class A felonies, except for certain Title 21 drug offenses; not more than three years for Class B felonies; not more than two years for Class C or D felonies; and not more than one year for Class E felonies. 18 U.S.C. § 3583(e)(3).

Given the relatively narrow ranges of incarceration available in many cases, combined with the potential difficulty in obtaining information necessary to determine specific offense characteristics, the Commission felt that it was undesirable at this time to develop guidelines that attempt to distinguish, in detail, the wide variety of behavior that can lead to revocation. Indeed, with the relatively low ceilings set by statute, revocation policy statements that attempted to delineate with great particularity the gradations of conduct leading to revocation would frequently result in a sentence at the statutory maximum penalty.

Accordingly, the Commission determined that revocation policy statements that provided for three broad grades of violations would permit proportionally longer terms for more serious violations and thereby would address adequately concerns about proportionality, without creating the problems inherent in the second option.

#### 4. The Basic Approach

The revocation policy statements categorize violations of probation and supervised release in three broad classifications ranging from serious new felonious criminal conduct to less serious criminal conduct and technical violations. The grade of the violation, together with the violator's

criminal history category calculated at the time of the initial sentencing, fix the applicable sentencing range.

The Commission has elected to develop a single set of policy statements for revocation of both probation and supervised release. In reviewing the relevant literature, the Commission determined that the purpose of supervision for probation and supervised release should focus on the integration of the violator into the community, while providing the supervision designed to limit further criminal conduct. Although there was considerable debate as to whether the sanction imposed upon revocation of probation should be different from that imposed upon revocation of supervised release, the Commission has initially concluded that a single set of policy statements is appropriate.

##### 5. A Concluding Note

The Commission views these policy statements for revocation of probation and supervised release as the first step in an evolutionary process. The Commission expects to issue revocation guidelines after judges, probation officers, and practitioners have had an opportunity to apply and comment on the policy statements.

In developing these policy statements, the Commission assembled two outside working groups of experienced probation officers representing every circuit in the nation, officials from the Probation Division of the Administrative Office of the U.S. Courts, the General Counsel's office at the Administrative Office of the U.S. Courts, and the U.S. Parole Commission. In addition, a number of federal judges, members of the Criminal Law and Probation Administration Committee of the Judicial Conference, and representatives from the Department of Justice and federal and community defenders provided considerable input into this effort.

Historical Note: Effective November 1, 1990 (see Appendix C, amendment 362).

## PART B - PROBATION AND SUPERVISED RELEASE VIOLATIONS

### Introductory Commentary

*The policy statements in this chapter seek to prescribe penalties only for the violation of the judicial order imposing supervision. Where a defendant is convicted of a criminal charge that also is a basis of the violation, these policy statements do not purport to provide the appropriate sanction for the criminal charge itself. The Commission has concluded that the determination of the appropriate sentence on any new criminal conviction should be a separate determination for the court having jurisdiction over such conviction.*

*Because these policy statements focus on the violation of the court-ordered supervision, this chapter, to the extent permitted by law, treats violations of the conditions of probation and supervised release as functionally equivalent.*

*Under 18 U.S.C. § 3584, the court, upon consideration of the factors set forth in 18 U.S.C. § 3553(a), including applicable guidelines and policy statements issued by the Sentencing Commission, may order a term of imprisonment to be served consecutively or concurrently to an undischarged term of imprisonment. It is the policy of the Commission that the sanction imposed upon revocation is to be served consecutively to any other term of imprisonment imposed for any criminal conduct that is the basis of the revocation.*

*This chapter is applicable in the case of a defendant under supervision for a felony or Class A misdemeanor. Consistent with §1B1.9 (Class B or C Misdemeanors and Infractions), this chapter does not apply in the case of a defendant under supervision for a Class B or C misdemeanor or an infraction.*

Historical Note: Effective November 1, 1990 (see Appendix C, amendment 362).

### **§7B1.1. Classification of Violations (Policy Statement)**

- (a) There are three grades of probation and supervised release violations:
  - (1) **Grade A Violations** -- conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in 26 U.S.C. § 5845(a); or (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;
  - (2) **Grade B Violations** -- conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;
  - (3) **Grade C Violations** -- conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.
- (b) Where there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

Commentary

Application Notes:

1. Under 18 U.S.C. §§ 3563(a)(1) and 3583(d), a mandatory condition of probation and supervised release is that the defendant not commit another federal, state, or local crime. A violation of this condition may be charged whether or not the defendant has been the subject of a separate federal, state, or local prosecution for such conduct. The grade of violation does not depend upon the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of the violation is to be based on the defendant's actual conduct.
2. "Crime of violence" has the same meaning as set forth in §4B1.2(1), and includes any offense under federal or state law punishable by imprisonment for a term exceeding one year that --
  - (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
  - (ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

A crime of violence includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth in the violation charged involved use of explosives or, by its nature, presented a serious potential risk of physical injury to another. A crime of violence also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

3. "Controlled substance offense" includes any offense under a federal or state law prohibiting the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with the intent to manufacture, import, export, distribute, or dispense. A controlled substance offense also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.
4. A "firearm or destructive device of a type described in 26 U.S.C. § 5845(a)" includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or a weapon made from a rifle, with a barrel or barrels of less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain large bore weapons.
5. Where the defendant is under supervision in connection with a felony conviction, or has a prior felony conviction, possession of a firearm (other than a firearm of a type described in 26 U.S.C. § 5845(a)) will generally constitute a Grade B violation, because 18 U.S.C. § 922(g) prohibits a convicted felon from possessing a firearm. The term "generally" is used in the preceding sentence, however, because there are certain limited exceptions to the applicability of 18 U.S.C. § 922(g). See, e.g., 18 U.S.C. § 925(c).

Historical Note: Effective November 1, 1990 (see Appendix C, amendment 362). A former §7B1.1 (Reporting of Violations of Probation and Supervised Release), effective November 1, 1987, was deleted as part of an overall revision of this Chapter, effective November 1, 1990 (see Appendix C, amendment 362).

**§7B1.2. Reporting of Violations of Probation and Supervised Release (Policy Statement)**

- (a) The probation officer shall promptly report to the court any alleged Grade A or B violation.
- (b) The probation officer shall promptly report to the court any alleged Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations.

**Commentary**

**Application Note:**

1. Under subsection (b), a Grade C violation must be promptly reported to the court unless the probation officer makes an affirmative determination that the alleged violation meets the criteria for non-reporting. For example, an isolated failure to file a monthly report or a minor traffic infraction generally would not require reporting.

**Historical Note:** Effective November 1, 1990 (see Appendix C, amendment 362). A former §7B1.2 (Revocation of Probation), effective November 1, 1987, was deleted as part of an overall revision of this Chapter, effective November 1, 1990 (see Appendix C, amendment 362).

**§7B1.3. Revocation of Probation or Supervised Release (Policy Statement)**

- (a) (1) Upon a finding of a Grade A or B violation, the court shall revoke probation or supervised release.
  - (2) Upon a finding of a Grade C violation, the court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision.
- (b) In the case of a revocation of probation or supervised release, the applicable range of imprisonment is that set forth in §7B1.4 (Term of Imprisonment).
- (c) In the case of a Grade B or C violation---
  - (1) Where the minimum term of imprisonment determined under §7B1.4 (Term of Imprisonment) is at least one month but not more than six months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in §5C1.1(e) for any portion of the minimum term; and

- (2) Where the minimum term of imprisonment determined under §7B1.4 (Term of Imprisonment) is more than six months but not more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in §5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.
- (3) In the case of a revocation based, at least in part, on a violation of a condition specifically pertaining to community confinement, intermittent confinement, or home detention, use of the same or a less restrictive sanction is not recommended.
- (d) Any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under §7B1.4 (Term of Imprisonment), and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.
- (e) Where the court revokes probation or supervised release and imposes a term of imprisonment, it shall increase the term of imprisonment determined under subsections (b), (c), and (d) above by the amount of time in official detention that will be credited toward service of the term of imprisonment under 18 U.S.C. § 3585(b), other than time in official detention resulting from the federal probation or supervised release violation warrant or proceeding.
- (f) Any term of imprisonment imposed upon the revocation of probation or supervised release shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation or supervised release.
- (g) (1) Where probation is revoked and a term of imprisonment is imposed, the provisions of §§5D1.1-1.3 shall apply to the imposition of a term of supervised release.
- (2) Where supervised release is revoked and the term of imprisonment imposed is less than the maximum term of imprisonment imposable upon revocation, the defendant may, to the extent permitted by law, be ordered to recommence supervised release upon release from imprisonment.

### Commentary

#### Application Notes:

1. *Revocation of probation or supervised release generally is the appropriate disposition in the case of a Grade C violation by a defendant who, having been continued on supervision after a finding of violation, again violates the conditions of his supervision.*
2. *The provisions for the revocation, as well as early termination and extension, of a term of supervised release are found in 18 U.S.C. § 3583(e). This statute, however, neither expressly authorizes nor precludes a court from ordering that a term of supervised release recommence after revocation. Under §7B1.3(f)(2), the court may order, to the extent permitted by law, the recommencement of a supervised release term following revocation.*
3. *Subsection (c) provides for the use of certain alternatives to imprisonment upon revocation. It is to be noted, however, that a court may decide that not every alternative is authorized by statute in every circumstance. For example, in United States v. Behnezhad, No. 89-10529 (9th Cir. July 3, 1990), the Ninth Circuit held that where a term of supervised release was revoked there was no statutory authority to impose a further term of supervised release. Under this decision, in the case of a revocation of a term of supervised release, an alternative that is contingent upon imposition of a further term of supervised release (e.g., a period of imprisonment followed by a period of community confinement or detention as a condition of supervised release) cannot be implemented. The Commission has transmitted to the Congress a proposal for a statutory amendment to address this issue.*
4. *Subsection (e) is designed to ensure that the revocation penalty is not decreased by credit for time in official detention other than time in official detention resulting from the federal probation or supervised release violation warrant or proceeding. Example: A defendant, who was in pre-trial detention for three months, is placed on probation, and subsequently violates that probation. The court finds the violation to be a Grade C violation, determines that the applicable range of imprisonment is 4-10 months, and determines that revocation of probation and imposition of a term of imprisonment of four months is appropriate. Under subsection (e), a sentence of seven months imprisonment would be required because the Bureau of Prisons, under 18 U.S.C. § 3585(b), will allow the defendant three months' credit toward the term of imprisonment imposed upon revocation.*
5. *Subsection (f) provides that any term of imprisonment imposed upon the revocation of probation or supervised release shall run consecutively to any sentence of imprisonment being served by the defendant. Similarly, it is the Commission's recommendation that any sentence of imprisonment for a criminal offense that is imposed after revocation of probation or supervised release be run consecutively to any term of imprisonment imposed upon revocation.*
6. *Intermittent confinement is authorized only as a condition of probation during the first year of the term of probation. 18 U.S.C. § 3563(b)(11). Intermittent confinement is not authorized as a condition of supervised release. 18 U.S.C. § 3583(d).*

**Historical Note:** Effective November 1, 1990 (see Appendix C, amendment 362). A former §7B1.3 (Revocation of Supervised Release), effective November 1, 1987, was deleted as part of an overall revision of this Chapter, effective November 1, 1990 (see Appendix C, amendment 362).

**§7B1.4. Term of Imprisonment (Policy Statement)**

- (a) The range of imprisonment applicable upon revocation is set forth in the following table:

**Revocation Table**  
**(in months of Imprisonment)**

<u>Grade of Violation</u>	<u>Criminal History Category*</u>					
	I	II	III	IV	V	VI
<b>Grade C</b>	3-9	4-10	5-11	6-12	7-13	8-14
<b>Grade B</b>	4-10	6-12	8-14	12-18	18-24	21-27
<b>Grade A</b>	(1) Except as provided in subdivision (2) below: 12-18    15-21    18-24    24-30    30-37    33-41 (2) Where the defendant was on probation or supervised release as a result of a sentence for a Class A felony: 24-30    27-33    30-37    37-46    46-57    51-63.					

\*The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervision.

- (b) *Provided*, that ---

- (1) Where the statutorily authorized maximum term of imprisonment that is imposable upon revocation is less than the minimum of the applicable range, the statutorily authorized maximum term shall be substituted for the applicable range; and
- (2) Where the minimum term of imprisonment required by statute, if any, is greater than the maximum of the applicable range, the minimum term of imprisonment required by statute shall be substituted for the applicable range.
- (3) In any other case, the sentence upon revocation may be imposed at any point within the applicable range, provided that the sentence --
  - (A) is not greater than the maximum term of imprisonment authorized by statute; and
  - (B) is not less than any minimum term of imprisonment required by statute.

## Commentary

### Application Notes:

1. *The criminal history category to be used in determining the applicable range of imprisonment in the Revocation Table is the category determined at the time the defendant originally was sentenced to the term of supervision. The criminal history category is not to be recalculated because the ranges set forth in the Revocation Table have been designed to take into account that the defendant violated supervision. In the rare case in which no criminal history category was determined when the defendant originally was sentenced to the term of supervision being revoked, the court shall determine the criminal history category that would have been applicable at the time the defendant originally was sentenced to the term of supervision. (See the criminal history provisions of §§4A1.1-4B1.4.)*
2. *Departure from the applicable range of imprisonment in the Revocation Table may be warranted when the court departed from the applicable range for reasons set forth in §4A1.3 (Adequacy of Criminal History Category) in originally imposing the sentence that resulted in supervision. Additionally, an upward departure may be warranted when a defendant, subsequent to the federal sentence resulting in supervision, has been sentenced for an offense that is not the basis of the violation proceeding.*
3. *In the case of a Grade C violation that is associated with a high risk of new felonious conduct (e.g., a defendant, under supervision for conviction of criminal sexual abuse, violates the condition that he not associate with children by loitering near a schoolyard), an upward departure may be warranted.*
4. *Where the original sentence was the result of a downward departure (e.g., as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted.*
5. *Under 18 U.S.C. § 3565(a), upon a finding that a defendant violated a condition of probation by being in possession of a controlled substance, the court is required "to revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence." Under 18 U.S.C. § 3583(g), upon a finding that a defendant violated a condition of supervised release by being in possession of a controlled substance, the court is required "to terminate supervised release and sentence the defendant to serve in prison not less than one-third of the term of supervised release." The Commission leaves to the court the determination of whether evidence of drug usage established solely by laboratory analysis constitutes "possession of a controlled substance" as set forth in 18 U.S.C. §§ 3565(a) and 3583(g).*
6. *Under 18 U.S.C. § 3565(b), upon a finding that a defendant violated a condition of probation by the actual possession of a firearm, the court is required "to revoke the sentence of probation and impose any other sentence that was available ... at the time of initial sentencing."*

**Historical Note:** Effective November 1, 1990 (see Appendix C, amendment 362). A former §7B1.4 (No Credit for Time Under Supervision), effective November 1, 1987, was deleted as part of an overall revision of this Chapter, effective November 1, 1990 (see Appendix C, amendment 362).

**§7B1.5. No Credit for Time Under Supervision (Policy Statement)**

- (a) Upon revocation of probation, no credit shall be given (toward any sentence of imprisonment imposed) for any portion of the term of probation served prior to revocation.
- (b) Upon revocation of supervised release, no credit shall be given (toward any term of imprisonment ordered) for time previously served on post-release supervision.
- (c) *Provided*, that in the case of a person serving a period of supervised release on a foreign sentence under the provisions of 18 U.S.C. § 4106A, credit shall be given for time on supervision prior to revocation, except that no credit shall be given for any time in escape or absconder status.

**Commentary**

**Application Note:**

1. Subsection (c) implements 18 U.S.C. § 4106A(b)(1)(C), which provides that the combined periods of imprisonment and supervised release in transfer treaty cases shall not exceed the term of imprisonment imposed by the foreign court.

**Background:** This section provides that time served on probation or supervised release is not to be credited in the determination of any term of imprisonment imposed upon revocation. Other aspects of the defendant's conduct, such as compliance with supervision conditions and adjustment while under supervision, appropriately may be considered by the court in the determination of the sentence to be imposed within the applicable revocation range.

**Historical Note:** Effective November 1, 1990 (see Appendix C, amendment 362).

## **Selected Guideline Statutory Provisions**

**18 U.S.C. §3551**  
**18 U.S.C. §3552**  
**18 U.S.C. §3553**  
**18 U.S.C. §3559**  
**18 U.S.C. §3561**  
**18 U.S.C. §3562**  
**18 U.S.C. §3563**  
**18 U.S.C. §3564**  
**18 U.S.C. §3565**  
**18 U.S.C. §3582**  
**18 U.S.C. §3583**  
**18 U.S.C. §3584**  
**18 U.S.C. §3585**  
**18 U.S.C. §3586**  
**18 U.S.C. §3606**  
**18 U.S.C. §3614**  
**18 U.S.C. §3621**  
**18 U.S.C. §3622**  
**18 U.S.C. §3623**  
**18 U.S.C. §3624**  
**26 U.S.C. §5845**

## **SELECTED GUIDELINE STATUTORY PROVISIONS**

### **Title 18 United States Code**

#### **§ 3551. Authorized sentences**

**(a) In general.**—Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

**(b) Individuals.**—An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

- (1) a term of probation as authorized by subchapter B;
- (2) a fine as authorized by subchapter C; or
- (3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

**(c) Organizations.**—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

- (1) a term of probation as authorized by subchapter B; or
- (2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988.)

#### **EDITORIAL NOTES**

**Effective Date and Savings Provisions of Sentencing Reform Act of 1984 (Pub.L. 98-473, Title II, c. II, §§ 211 to 239); Terms of Members of U.S. Sentencing Commission and U.S. Parole Commission; Parole Release Dates; Membership of National Institute of Corrections, Advisory Corrections Council, and U.S. Sentencing Commission.** Section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended by Pub.L. 99-217, §§ 2, 4, Dec. 26, 1985, 99 Stat. 1728; Pub.L. 99-646, § 35, Nov. 10, 1986, 100 Stat. 3599; Pub.L. 100-182, § 2, Dec. 7, 1987, 101 Stat. 1266, provided:

"(a)(1) This chapter [chapter II, §§ 211-239, of Title II of Pub.L. 98-473] shall take effect on the first day of the first calendar month beginning 36 months after the date of enactment [Oct. 12, 1984] and shall apply only to offenses committed after the taking effect of this chapter, except that—

"(A) the repeal of chapter 402 of title 18, United States Code, shall take effect on the date of enactment;

"(B)(i) chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act or October 1, 1983, whichever occurs later, and the United States Sentencing Commission shall submit the initial sentencing guidelines promulgated under section 994(a)(1) of title 28 to the Congress within 30 months of the effective date of such chapter 58; and

"(ii) the sentencing guidelines promulgated pursuant to section 994(a)(1) shall not go into effect until—

"(I) the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (B)(i), along with a report stating the reasons for the Commission's recommendations;

"(II) the General Accounting Office has undertaken a study of the guidelines, and their potential impact in comparison with the operation of the existing sentencing and parole release system, and has, within one hundred and fifty days of submission of the guidelines, reported to the Congress the results of its study; and

"(III) the day after the Congress has had six months after the date described in subclause (I) in which to examine the guidelines and consider the reports; and

"(IV) section 212(a)(2) [enacting chapter 227, 'Sentences', comprised of sections 3551 to 3559, 3561 to 3566, 3571 to 3574, and 3581 to 3586; and chapter 229, 'Postsentence administration', comprised of sections 3601 to 3607, 3611 to 3615, and 3621 to 3625 of this title; and repealing former chapter 227, 'Sentence, judgment, and execution', comprised of sections 3561 to 3580; former chapter 229, 'Fines, penalties, and forfeitures', comprised of sections 3611 to 3620; and former chapter 231, 'Probation', comprised of sections 3651 to 3656 of this title] takes effect, in the case of the initial sentencing guidelines so promulgated.

"(2) For the purposes of section 992(a) of title 28, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to paragraph (1)(B)(ii).

"(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for five years after the effective date as to an individual who committed an offense or an act of juvenile delinquency before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B):

- "(A) Chapter 311 of title 18, United States Code.
- "(B) Chapter 309 of title 18, United States Code.
- "(C) Sections 4251 through 4255 of title 18, United States Code.
- "(D) Sections 5041 and 5042 of title 18, United States Code.
- "(E) Sections 5017 through 5020 of title 18, United States Code, as to a sentence imposed before the date of enactment.

"(F) The maximum term of imprisonment in effect on the effective date for an offense committed before the effective date.

"(G) Any other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release.

"(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this Act, the term of office of a Commissioner who is in office on the effective date is extended to the end of the five-year period after the effective date of this Act.

"(3) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this Act, pursuant to section 4206 of title 18, United States Code. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

"(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

- "(A) released pursuant to a provision listed in paragraph (1); and
- "(B)(i) subject to supervision on the day before the expiration of the five-year period following the effective date of this Act; or
  - "(ii) released on a date set pursuant to paragraph (3); "including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to the individual until the expiration of his sentence, except that the district court shall determine, in accord with the Federal Rules of Criminal Procedure, whether release should be revoked or the conditions of release amended for violation of a condition of release.

"(5) Notwithstanding the provisions of section 991 of title 28, United States Code, and sections 4351 and 5002 of title 18, United States Code, the Chairman of the United States Parole Commission or his designee shall be a member of the National Institute of Corrections, and the Chairman of the United States Parole Commission shall be a member of the Advisory Corrections Council and a nonvoting member of the United States Sentencing Commission, ex officio, until the expiration of the five-year period following the effective date of this Act. Notwithstanding the provisions of section 4351 of title 18, during the five-year period the National Institute of Corrections shall have seventeen members, including seven ex officio members. Notwithstanding the provisions of section 991 of title 28, during the five-year period the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members."

**Sentencing Considerations Prior to Enactment of Guidelines.** Section 239 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2039, provided:

"Since, due to an impending crisis in prison over-crowding, available Federal prison space must be treated as a scarce resource in the sentencing of criminal defendants;

"Since, sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society;

"Since, in cases of nonviolent and nonserious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service;

"Since, in the two years preceding the enactment of sentencing guidelines, Federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and nonserious offenders: Now, therefore, be it

"Declared, That it is the sense of the Senate that in the two years preceding the enactment of the sentencing guidelines, Federal judges, in determining the particular sentence to be imposed, consider—

- "(1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- "(2) the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense; and
- "(3) the general appropriateness of imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense."

#### **§ 3552. Presentence reports**

**(a) Presentence investigation and report by probation officer.**—A United States probation officer shall make a presentence investigation of a defendant that is required pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, and shall, before the imposition of sentence, report the results of the investigation to the court.

**(b) Presentence study and report by bureau of prisons.**—If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a misdemeanor or felony, it may order a study of the defendant. The study shall be conducted in the local community by qualified consultants unless the sentencing judge finds that there is a compelling reason for the study to be done by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. The period of the study shall be no more than sixty days. The order shall specify the additional information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 3581(b) for the offense committed. The study shall inquire into such matters as are specified by the court and any other matters that the Bureau of Prisons or the professional consultants believe are pertinent to the factors set forth in section 3553(a). The period of the study may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of the study, or by the expiration of any extension granted by the court, the United States marshal shall, if the defendant is in custody, return the defendant to the court for final sentencing. The Bureau of Prisons or the professional consultants shall provide the court with a written report of the pertinent results of the study and make to the court whatever recommendations the Bureau or the consultants believe will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau or the consultants concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that they believe are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

**(c) Presentence examination and report by psychiatric or psychological examiners.**—If the court, before or after its receipt of a report specified in subsection (a) or (b) desires more information than is otherwise available to it as a basis for determining the mental condition of the defendant, the court may order the same psychiatric or psychological examination and report thereon as may be ordered under section 4244(b) of this title.

**(d) Disclosure of presentence reports.**—The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988, and amended Pub.L. 99-646, § 7(a), Nov. 10, 1986, 100 Stat. 3593.)

## EDITORIAL NOTES

**Effective Date of 1986 Amendment.** Section 7(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3552 of title 18, United States Code [this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### § 3553. Imposition of a sentence

**(a) Factors to be considered in imposing a sentence.**—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

**(b) Application of guidelines in imposing a sentence.**—The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

**(c) Statement of reasons for imposing a sentence.**—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

- (1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or
- (2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's

statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) **Presentence procedure for an order of notice.**—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) **Limited authority to impose a sentence below a statutory minimum.**—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989, and amended Pub.L. 99-570, Title I, § 1007(b), Oct. 27, 1986, 100 Stat. 3707-7; Pub.L. 99-646, §§ 8(a), 9(a), 80(a), 81(a), Nov. 10, 1986, 100 Stat. 3593, 3619; Pub.L. 100-182, §§ 3, 16(a), (17), Dec. 7, 1987, 101 Stat. 1266, 1269, 1270; Pub.L. 100-690, Title VII, § 7102, Nov. 18, 1988, 102 Stat. 4416.)

#### EDITORIAL NOTES

**Effective Date of 1987 Amendment.** Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182.

**Effective Date of 1986 Amendment.** Section 8(c) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (a) of this section and section 3662 of this title] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

Section 9(b) of Pub.L. 99-646 provided that: "The amendments made by this section [subsec. (b) of this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

Section 80(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (d) of this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [see Effective Date note below]."

Section 81(b) of Pub.L. 99-646 provided that: "—The amendments made by this section [amending subsec. (a) of this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [see Effective Date note below]."

Section 1007(b) of Pub.L. 99-570 provided that: "(b) The amendment made by this section [enacting subsec. (d) of this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

**Authority to Lower Sentences Below Statutory Minimum for Old Offenses.** Section 24 of Pub.L. 100-182 provided that: "Notwithstanding section 235 of the Comprehensive Crime Control Act of 1984 [section 235 of Pub.L. 98-473, set out as a note under section 3551 of this title]—

"(1) section 3553(e) of title 18, United States Code [subsec. (e) of this section];

"(2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act; and  
"(3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code [sections 991 et seq. of Title 28, Judiciary and Judicial Procedure], shall apply in the case of an offense committed before the taking effect of such guidelines."

#### § 3559. Sentencing classification of offenses

(a) **Classification.**—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

- (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
- (2) twenty-five years or more, as a Class B felony;
- (3) less than twenty-five years but ten or more years, as a Class C felony;
- (4) less than ten years but five or more years, as a Class D felony;
- (5) less than five years but more than one year, as a Class E felony;
- (6) one year or less but more than six months, as a Class A misdemeanor;
- (7) six months or less but more than thirty days, as a Class B misdemeanor;
- (8) thirty days or less but more than five days, as a Class C misdemeanor; or
- (9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) **Effect of classification.**—An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991, and amended Pub.L. 100-185, § 5, Dec. 11, 1987, 101 Stat. 1279; Pub.L. 100-690, Title VII, § 7041, Nov. 18, 1988, 102 Stat. 4399.)

#### EDITORIAL NOTES

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### § 3561. Sentence of probation

(a) **In general.**—A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

- (1) the offense is a Class A or Class B felony and the defendant is an individual;
- (2) the offense is an offense for which probation has been expressly precluded; or
- (3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense.

(b) **Authorized terms.**—The authorized terms of probation are—

- (1) for a felony, not less than one nor more than five years;
- (2) for a misdemeanor, not more than five years; and
- (3) for an infraction, not more than one year.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992, and amended Pub.L. 99-646, § 10(a), Nov. 10, 1986, 100 Stat. 3593; Pub.L. 100-182, § 7, Dec. 7, 1987, 101 Stat. 1267.)

## **EDITORIAL NOTES**

**Effective Date of 1987 Amendment.** Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182.

**Effective Date of 1986 Amendment.** Section 10(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (a) of this section] shall take effect on the date of the taking effect of such section 3561(a) [subsec. (a) of this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3562. Imposition of a sentence of probation**

**(a) Factors to be considered in imposing a term of probation.**—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.

**(b) Effect of finality of judgment.**—Notwithstanding the fact that a sentence of probation can subsequently be—

(1) modified or revoked pursuant to the provisions of section 3564 or 3565;

(2) corrected pursuant to the provisions of rule 35 and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992.)

## **EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3563. Conditions of probation**

**(a) Mandatory conditions.**—The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13), unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b); and

(3) for a felony, a misdemeanor, or an infraction, that the defendant not possess illegal controlled substances.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

**(b) Discretionary conditions.**—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

- (1) support his dependents and meet other family responsibilities;
- (2) pay a fine imposed pursuant to the provisions of subchapter C;
- (3) make restitution to a victim of the offense pursuant to the provisions of sections 3663 and 3664 (but not subject to the limitations of 3663(a));
- (4) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;
- (5) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;
- (6) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (7) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;
- (8) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- (9) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (10) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;
- (11) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation;
- (12) reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;
- (13) work in community service as directed by the court;
- (14) reside in a specified place or area, or refrain from residing in a specified place or area;
- (15) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (16) report to a probation officer as directed by the court or the probation officer;
- (17) permit a probation officer to visit him at his home or elsewhere as specified by the court;
- (18) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;
- (19) notify the probation officer promptly if arrested or questioned by a law enforcement officer;
- (20) remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration; or
- (21) satisfy such other conditions as the court may impose.

**(c) Modifications of conditions.**—The court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.

**(d) Written statement of conditions.**—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1993, and amended Pub.L. 99-646, §§ 11(a), 12(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, §§ 10, 18, Dec. 7, 1987, 101 Stat. 1267, 1270; Pub.L. 100-690, Title VII, §§ 7086, 7110, 7303(a)(1), 7305(a), Nov. 18, 1988, 102 Stat. 4408, 4419, 4464, 4465.)

#### EDITORIAL NOTES

**Effective Date of 1988 Amendment.** Section 7303(d) of Pub.L. 100-690 provided that: "The amendments made by this section [amending this section and sections 3565, 3583, 4209, and 4214 of this title] shall apply with respect to persons whose probation, supervised release, or parole begins after December 31, 1988."

**Effective Date of 1987 Amendment.** Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182.

**Effective Date of 1986 Amendment.** Section 11(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (b)(11) of this section] shall take effect on the date of the taking effect of such section 3563(b)(11) [subsec. (b)(11) of this section]."

Section 12(c)(1) of Pub.L. 99-646 provided that: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall take effect on the date of the taking effect of such section 3563(c) [subsec. (c) of this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### **§ 3564. Running of a term of probation**

(a) **Commencement.**—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) **Concurrence with other sentences.**—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.

(c) **Early termination.**—The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

(d) **Extension.**—The court may, after a hearing, extend a term of probation, if less than the maximum authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

(e) **Subject to revocation.**—A sentence of probation remains conditional and subject to revocation until its expiration or termination.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1994, and amended Pub.L. 99-646, § 13(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, § 11, Dec. 7, 1987, 101 Stat. 1268.)

#### **EDITORIAL NOTES**

**Effective Date of 1987 Amendment.** Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182.

**Effective Date of 1986 Amendment.** Section 13(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall take effect on the date of the taking effect of such section 3564 [this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3565. Revocation of probation**

(a) **Continuation or revocation.**—If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable—

- (1) continue him on probation, with or without extending the term of<sup>1</sup> modifying or enlarging the conditions; or
- (2) revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.

Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.

(b) **Mandatory revocation for possession of a firearm.**—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.

(c) **Delayed revocation.**—The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995, amended Pub.L. 100-690, Title VI, § 6214, Title VII, § 7303(a)(2), Nov. 18, 1988, 102 Stat. 4361, 4464.)

#### **EDITORIAL NOTES**

**References in Text.** The Federal Rules of Criminal Procedure, referred to in subsec. (b), are set out in the front of this volume.

**Effective Date of 1988 Amendment.** Amendment by section 7303(a)(2) of Pub.L. 100-690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub.L. 100-690, set out as a note under section 3563 of this title.

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3566. Implementation of a sentence of probation**

The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

#### **EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and

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<sup>1</sup>So in original. Probably should be "or".

except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

**§ 3582. Imposition of a sentence of imprisonment**

**(a) Factors to be considered in imposing a term of imprisonment.**—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

**(b) Effect of finality of judgment.**—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

- (1) modified pursuant to the provisions of subsection (c);
- (2) corrected pursuant to the provisions of rule 35 and section 3742; or
- (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

**(c) Modification of an imposed term of imprisonment.**—The court may not modify a term of imprisonment once it has been imposed except that—

- (1) in any case—
  - (A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and
  - (B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and
- (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

**(d) Inclusion of an order to limit criminal association of organized crime and drug offenders.**—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998, amended Pub.L. 100-690, Title VII, § 7107, Nov. 18, 1988, 102 Stat. 4418.)

**EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

**§ 3583. Inclusion of a term of supervised release after imprisonment**

(a) **In general.**—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute.

(b) **Authorized terms of supervised release.**—Except as otherwise provided, the authorized terms of supervised release are—

- (1) for a Class A or Class B felony, not more than five years;
- (2) for a Class C or Class D felony, not more than three years; and
- (3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) **Factors to be considered in including a term of supervised release.**—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

(d) **Conditions of supervised release.**—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not possess illegal controlled substances. The court may order, as a further condition of supervised release, to the extent that such condition—

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C),<sup>1</sup> and (a)(2)(D); and
- (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

(e) **Modification of conditions or revocation.**—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6)—

(1) terminate a term of supervised release and discharge the person released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision; or

(3) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony.

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<sup>1</sup>So in original. See Codification note below.

(5)<sup>2</sup> order the person to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) **Written statement of conditions.**—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) **Possession of controlled substances.**—If the defendant is found by the court to be in the possession of a controlled substance, the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1999, and amended Pub.L. 99-570, Title I, § 1006(a), Oct. 27, 1986, 100 Stat. 3207-6, 3207-7; Pub.L. 99-646, § 14(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, §§ 8, 9, 12, 25, Dec. 7, 1987, 101 Stat. 1267, 1268, 1272; Pub.L. 100-690, Title VII, §§ 7108, 7303(b), 7305(b), Nov. 18, 1988, 102 Stat. 4418, 4419, 4464-4466.)

#### EDITORIAL NOTES

**Codification.** Amendment by section 7108(a)(2) of Pub.L. 100-690 to subsec. (d)(2), which directed that "(a)(2)(C)," be inserted after "(a)(2)(B)," was executed by inserting "(a)(2)(C)," after "(a)(2)(B)" since no comma appears after "(a)(2)(B)".

Amendment by section 7305(b)(2) of Pub.L. 100-690 to subsec. (e) which struck out "or" at the end of par. (3), struck out the period at the end of par. (4) and inserted ";" or", and added par. (5) could not be completely executed in view of prior amendment to such provision by section 7108(b) of Pub.L. 100-690 which redesignated former par. (4) as (3) thereby resulting in no par. (4) to be amended.

Amendment by section 14(a)(1) of Pub.L. 99-646 to subsec. (e) catchline duplicates amendment to such subsection catchline made by Pub.L. 99-570, § 1006(a)(3)(A).

**Effective Date of 1988 Amendment.** Amendment by section 7303(b) of Pub.L. 100-690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub.L. 100-690, set out as a note under section 3563 of this title.

**Effective Date of 1987 Amendment.** Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182.

**Effective Date of 1986 Amendment.** Section 14(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (e) of this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [this section]."

Section 1006(a)(4) of Pub.L. 99-570 provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### § 3584. Multiple sentences of imprisonment

(a) **Imposition of concurrent or consecutive terms.**—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms

<sup>2</sup>So in original. See Codification note below.

may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) **Factors to be considered in imposing concurrent or consecutive terms.**—The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) **Treatment of multiple sentence as an aggregate.**—Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2000.)

#### EDITORIAL NOTES

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### § 3585. Calculation of a term of imprisonment

(a) **Commencement of sentence.**—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) **Credit for prior custody.**—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

- (1) as a result of the offense for which the sentence was imposed; or
  - (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;
- that has not been credited against another sentence.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

#### EDITORIAL NOTES

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### § 3586. Implementation of a sentence of imprisonment

The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229 and, if the sentence includes a term of supervised release, by the provisions of subchapter A of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

#### EDITORIAL NOTES

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and

except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### **§ 3606. Arrest and return of a probationer**

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest whenever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or release, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshall may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

(Added Pub. L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

#### **§ 3614. Resentencing upon failure to pay a fine**

(a) **Resentencing.**—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine the court may resentence the defendant to any sentence which might originally be imposed.

(b) **Imprisonment.**—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

(Added Pub.L. 98-473, Title II, § 212 (a)(2), Oct. 12, 1984, 98 Stat. 2006.)

#### **EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### **§ 3621. Imprisonment of a convicted person**

(a) **Commitment to custody of Bureau of Prisons.**—A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) **Place of imprisonment.**—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

(1) the resources of the facility contemplated;

(2) the nature and circumstances of the offense;

(3) the history and characteristics of the prisoner;

(4) any statement by the court that imposed the sentence—

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted;

or

(B) recommending a type of penal or correctional facility as appropriate; and

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another.

(c) **Delivery of order of commitment.**—When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) **Delivery of prisoner for court appearances.**—The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

#### EDITORIAL NOTES

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### § 3622. Temporary release of a prisoner

The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to—

(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of—

- (1) visiting a relative who is dying;
- (2) attending a funeral of a relative;
- (3) obtaining medical treatment not otherwise available;
- (4) contacting a prospective employer;
- (5) establishing or reestablishing family or community ties; or
- (6) engaging in any other significant activity consistent with the public interest;

(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

(1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and

(2) the prisoner agrees to pay to the Bureau such costs incident to official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

## **EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3623. Transfer of a prisoner to State authority**

The Director of the Bureau of Prisons shall order that a prisoner who has been charged in an indictment or information with, or convicted of, a State felony, be transferred to an official detention facility within such State prior to his release from a Federal prison facility if—

- (1) the transfer has been requested by the Governor or other executive authority of the State;
- (2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and
- (3) the Director finds that the transfer would be in the public interest.

If more than one request is presented with respect to a prisoner, the Director shall determine which request should receive preference. The expenses of such transfer shall be borne by the State requesting the transfer.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008.)

## **EDITORIAL NOTES**

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

### **§ 3624. Release of a prisoner**

(a) **Date of release.**—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) **Credit toward service of sentence for satisfactory behavior.**—A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted. Credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(c) **Pre-release custody.**—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for his re-entry into the community. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

(d) **Allotment of clothing, funds, and transportation.**—Upon the release of a prisoner on the expiration of his term of imprisonment, the Bureau of Prisons shall furnish him with—

(1) suitable clothing;

(2) an amount of money, not more than \$500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of his conviction, to his bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) **Supervision after release.**—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008, and amended Pub.L. 99-646, §§ 16(a), 17(a), Nov. 10, 1986, 100 Stat. 3595.)

#### EDITORIAL NOTES

**Effective Date of 1986 Amendment.** Section 16(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (b) of this section] shall take effect on the date of the taking effect of such section 3624 [this section]."

Section 17(a) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (e) of this section] shall take effect on the date of the taking effect of such section 3624 [this section]."

**Effective Date.** Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

#### Title 26 United States Code

##### § 5845. Definitions

For the purpose of this chapter—

(a) **Firearm.**—The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such a weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) **Machinegun.**—The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and

intended, for use in converting a weapon into a machinegun, and any combination of parts form which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) **Rifle**.-The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each weapon which may readily restored to fire a fixed cartridge.

(d) **Shotgun**.-The term "shotgun"means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) **Any other weapon**.-The term"any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) **Destructive device**.-The term "destructive device" means (1 any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting a device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive devices may be readily assembled. The term "destructive device" shall not include any device which is neither designed or redesigned for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, linethrowing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary or is a rifle which the owner intends to use solely for sporting purposes.

(g) **Antique firearm**.-The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channel of commercial trade.

(h) **Unserviceable firearm**.-The term "unserviceable firearm" means a firearm which is capable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) **Make**.-The term "make" and the various derivatives of such word shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) **Transfer**.-The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) **Dealer**.-The term"dealer" means any person, not a manufacturer or imported, engaged in the business of selling, renting, leasing, or loaning, firearms and shall include pawnbrokers who accept firearms as collateral for loans.

**(l) Importer.** The term "importer" means any person which is engaged in the business of importing or bringing firearms in the United States.

**(m) Manufacturer.** The term "manufacturer" means any person which is engaged in the business of manufacturing firearms.

(Added Pub.L. 90-618, Title II, § 201, Oct. 22, 1968, 82 Stat. 1230 and amended Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), (J), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub.L. 99-308, § 109, May 19, 1986, 100 Stat. 460.)

#### EDITORIAL NOTES

**References in Text.** Section 4684(2), 4685, or 4686 or title 10 of the United States Code, referred in to subsec. (l) are § 4684(2), 4685, and 4686 of Title 10, Armed Forces.

**Effective Date of 1986 Amendment.** Amendment by Pub.L. 99-308 effective 180 days after May 19, 1986, see section 110 (a) of Pub.L. 99-308, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

**Effective Date of 1986 Amendment.** Section effective the first day of the first month following October , 1968, except as to persons possessing firearms as defined in subsec. (a) which are not registered to such persons in the National Firearms Registration and Transfer Record, see § 207 of Pub.L. 90-618, set out as a note under § 5801 of this title.

**Similar Provisions.** Provisions similar to those comprising this section were contained in prior § 5848, Act Aug. 16, 1954, c> 736, 68A Stat. 727 as amended by Acts Sept. 2, 1958, Pub.L. 85-859, Title II, § 203(l), 72 Stat. 1427, June 1, 1960, Pub.L. 86-478, § 3, 74 Stat. 149, prior to the general revision of this chapter by Pub.L. 90-618.

**Prior Provisions.** A prior § 5845, Act Aug. 16, 1954, c. 736, 68A Stat. 725, related to the importation of firearms into the United States or its territory, prior to the general revisions of this chapter by Pub.L. 90-618.

# VIOLATION WORKSHEET

1. Defendant \_\_\_\_\_
2. Docket Number (Year-Sequence-Defendant No.) \_\_\_\_\_
3. District/Office \_\_\_\_\_
4. Original Sentence Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
month day year

(If different than above):

5. Original District/Office \_\_\_\_\_
6. Original Docket Number (Year-Sequence-Defendant No.) \_\_\_\_\_

7. List each violation and determine the applicable grade (see §7B1.1):

<u>Violation(s)</u>	<u>Grade</u>
• _____	_____
• _____	_____
• _____	_____
• _____	_____
• _____	_____
• _____	_____

8. Most Serious Grade of Violation (see §7B1.1(b))
9. Criminal History Category (see §7B1.4(a))
10. Range of Imprisonment (see §7B1.4(a))   
months

11. Sentencing Options for Grade B and C Violations Only (Check the appropriate box):

- (a) If the minimum term of imprisonment determined under §7B1.4 (Term of Imprisonment) is at least one month but not more than six months, §7B1.3(c)(1) provides sentencing options to imprisonment.
- (b) If the minimum term of imprisonment determined under §7B1.4 (Term of Imprisonment) is more than six months but not more than ten months, §7B1.3(c)(2) provides sentencing options to imprisonment.
- (c) If the minimum term of imprisonment determined under §7B1.4 (Term of Imprisonment) is more than ten months, no sentencing options to imprisonment are available.

Mail documents to: United States Sentencing Commission, 1331 Pennsylvania Avenue, N.W.  
Suite 1400, Washington, D.C. 20004, Attention: Monitoring Unit

11/1/90

Defendant \_\_\_\_\_

**12. Unsatisfied Conditions of Original Sentence**

List any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation (see §7B1.3(d)):

Restitution(\$) \_\_\_\_\_

Community Confinement \_\_\_\_\_

Fine(\$) \_\_\_\_\_

Home Detention \_\_\_\_\_

Other \_\_\_\_\_

Intermittent Confinement \_\_\_\_\_

**13. Supervised Release**

If probation is to be revoked, determine the length, if any, of the term of supervised release according to the provisions of §§5D1.1-1.3 (see §§7B1.3(g)(1)).

Term: \_\_\_\_\_ to \_\_\_\_\_ years

If supervised release is revoked and the term of imprisonment imposed is less than the maximum term of imprisonment imposable upon revocation, the defendant may, to the extent permitted by law, be ordered to recommence supervised release upon release from imprisonment (see 18 U.S.C. §3583(e) and §7B1.3(g)(2)).

Period of supervised release to be served following release from imprisonment: \_\_\_\_\_

**14. Departure**

List aggravating and mitigating factors that may warrant a sentence outside the applicable range of imprisonment:

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**15. Official Detention Adjustment (see §7B1.3(e)): \_\_\_\_\_ months \_\_\_\_\_ days**

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Suite 1400, Washington, D.C. 20004, Attention: Monitoring Unit

11/1/80

## **INSTRUCTIONS FOR USSC VIOLATION WORKSHEET**

1. List the defendant's name as used by the court.
2. List the docket number assigned to the case. (This will be the new docket number, if applicable.)
3. List the judicial district and office where the violation proceedings are being filed.
4. List the date that the defendant received the federal sentence that imposed the term of supervision.
5. List the original district and office if different than that listed in item #3.
6. List the original docket number if different than that listed in item #2.
7. List separately each violation that has been charged. List first the Grade A violations, then Grade B violations, and then Grade C violations. If criminal conduct is the basis for the violation, provide a brief description of the criminal conduct (e.g., "shoplifting;" "driving while intoxicated;" "distribution of cocaine.")

For violations of conditions other than new criminal conduct, provide a brief description. For example, list "Violation of Intermittent Confinement" for a violation that charges failure to comply with a condition of probation requiring a term of intermittent confinement; list "Failure to Not Associate with Children" for a violation that charges failure to comply with a condition requiring a defendant not to associate with children; and list "Failure to Report to Probation Officer" for a violation that charges failure to report to the probation officer as instructed. Do not describe violations by referring to the number of the condition of probation or supervised release.

If more than six violations are charged, list additional violations on a separate page and attach to the documents being sent to the Commission.

8. Enter the most serious grade of violation listed in item #7.
9. Enter the criminal history category determined at the time of the original sentence to a term of supervision. (Do not recalculate the criminal history category.) In the rare case in which no criminal history category was determined when the defendant originally was sentenced to the term of supervision being revoked, determine the criminal history category that would have been applicable at the time the defendant originally was sentenced to the term of supervision.
10. Determine the range of imprisonment specified in the Revocation Table using the most serious grade of violation and the original criminal history category.
11. Check the appropriate box under (a), (b), or (c). If the most serious violation is a Grade A violation, no sentencing options are available. However, if the most serious violation is a Grade B or C violation, sentencing options may be available. For Grade B and C violations, the sentencing options will depend on the range of imprisonment.

12. As required in §7B1.3, any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under §7B1.4 (Term of Imprisonment). Any such period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.

If there are any unsatisfied conditions of supervision at the time of revocation, list the amount in months and/or dollars. For example, the defendant was originally sentenced to three years probation with a condition that he serve six months in community confinement. After serving three months, he absconds from the facility. In this case, three months of community confinement remain unserved.

13. In those cases where probation is to be revoked, determine the length, if any, of the supervised release term to follow imprisonment according to §§5D1.1 and 5D1.2. The length of the supervised release term is determined by the class of offense for which the defendant was originally sentenced and placed on supervision.

When the supervised release is revoked, list the period of supervised release, if any, to be served following release from imprisonment.

14. List those aggravating or mitigating factors that may warrant a sentence outside the applicable range of imprisonment (e.g., list "Adequacy of Criminal History Category" if an upward departure outside the applicable range of imprisonment in the Revocation Table is warranted because the original sentencing court departed upward after determining that the criminal history category was inadequate for reasons set forth in §4A1.3 (Adequacy of Criminal History Category)).

15. List the amount of time to be added to the term of imprisonment imposed upon revocation of supervision if it has been determined that the Bureau of Prisons will credit the defendant with time served in official detention (other than time in official detention resulting from the federal probation or supervised release violation warrant or proceeding). For example, the defendant received a sentence of probation and served two months of intermittent confinement as a condition of that probation. The court, after revoking the defendant's probation, determines that a sentence of three months is appropriate. The Court should impose a sentence of five months to take into account the two months (the amount of time spent in intermittent confinement) that the Bureau of Prisons will credit the defendant toward the term of imprisonment imposed upon revocation.

**SUMMARY OF VIOLATION HEARING**  
(to be completed by USPO following action by court)

Defendant \_\_\_\_\_

Docket Number (Year-Sequence-Defendant No.) \_\_\_\_\_

District/Office \_\_\_\_\_

Original Sentence Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
month day year

Date Supervision Term Commenced \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
month day year

(If different than above):

Original District/Office \_\_\_\_\_

Original Docket Number (Year-Sequence-Defendant No.) \_\_\_\_\_

1. Violation (check one): \_\_\_\_\_ probation \_\_\_\_\_ supervised release

If supervised release, list the statutory maximum term of imprisonment imposable.

\_\_\_\_\_ years

2. Check one:

- The court adopts the application of Chapter Seven as presented in the violation report and/or worksheets.
- The court adopts the application of Chapter Seven as presented in the violation report and/or worksheets except (provide attachment, if necessary):  
\_\_\_\_\_  
\_\_\_\_\_

3. Chapter Seven Application Determined by the Court:

Grade of Violation: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months

Other: \_\_\_\_\_

4. Action Taken by the Court and Date of Action: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Attach a copy of the Judgement Order) month day year

continued on supervision

conditions were modified

term was extended

probation or supervised release was revoked

**5. Check one:**

- The sentence imposed is authorized by application of the Chapter Seven policy statements.
- The sentence imposed is not authorized by application of the Chapter Seven policy statements for the following reasons:

\_\_\_\_\_

\_\_\_\_\_

**6. If a violation was based on drug usage, list the number of times the defendant's use of drugs was established by testing or verbal admission (include all instances of drug use leading to this violation).**

\_\_\_\_\_

**7. List the earliest date of any violation conduct.**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
month day year

**8. If this violation is based on criminal conduct, has the defendant been formally charged with any offense?**

Check one:  Yes  No

**9. Has the defendant been convicted or sentenced on these criminal charges?**

Check one:  Yes  No

If yes, what was that sentence? Probation (years) \_\_\_\_\_ Imprisonment (months) \_\_\_\_\_

Other \_\_\_\_\_

**10. Was the federal revocation sentence ordered to be served consecutively to any other federal, state, or local term of imprisonment?**

Check one:  Yes  No

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Suite 1400, Washington, D.C. 20004, Attention: Monitoring Unit

**REVOCATION TABLE**  
**(in months of imprisonment)**

**Criminal History Category\***

<b>Grade of Violation</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>	<b>VI</b>
<b>Grade C</b>	3 - 9	4 - 10	5 - 11	6 - 12	7 - 13	8 - 14
<b>Grade B</b>	4 - 10	6 - 12	8 - 14	12 - 18	18 - 24	21 - 27
<b>Grade A</b>						
(1) <i>Except as provided in subdivision (2) below:</i>	12 - 18	15 - 21	18 - 24	24 - 30	30 - 37	33 - 41
(2) <i>Where the defendant was on probation or supervised release as a result of a sentence for a Class A felony:</i>	24 - 30	27 - 33	30 - 37	37 - 46	46 - 57	51 - 63

\* The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervision.

**APPENDIX H**  
**SUPERVISOR'S CASE PLAN REVIEW**

**CASE NAME** \_\_\_\_\_ **OFFICER** \_\_\_\_\_

**INITIAL** \_\_\_\_ **OR SUBSEQUENT** \_\_\_\_ **PLAN**    **DATE SUBMITTED BY OFFICER:** \_\_\_\_\_

**A. Financial, Service, and Confinement Conditions**

1. Are all active conditions properly identified?       **NONE**  
2. Were appropriate activities taken to enforce:  
    a. Fines/special assessments?       **Y**     **N**  
    b. Community service?       **Y**     **N**     **N/A**  
    c. CCC/Home Confinement?       **Y**     **N**     **N/A**

**B. Risk Control**

1. Are all supervision issues properly identified?       **NONE**  
2. Were appropriate activities undertaken to control the offender's level/type of risk?       **Y**     **N**  
3. Is third-party risk properly addressed?       **Y**     **N**

**C. Correctional Treatment**

1. Are all supervision issues properly identified?       **NONE**  
2. Were appropriate activities undertaken to address:  
    a. Drug/Alcohol issues       **Y**     **N**     **N/A**  
    b. Mental/emotional issues       **Y**     **N**     **N/A**  
    c. Employment/education issues       **Y**     **N**     **N/A**  
    d. Financial issues       **Y**     **N**     **N/A**  
    e. Other issues       **Y**     **N**     **N/A**

**D. Does semi-annual progress report correctly identify problems and offender's compliance?**       **Y**     **N**     **N/A**

**E. If a new case, are projected activities appropriate to address supervision issues?**       **Y**     **N**     **N/A**

**SUSPO's comments/directions:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REVIEWED AND APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**END**

**12-27-96**

